



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

3 3433 07481479 3



N B Q

Gilmer SKETCHES
ESSAYS, etc



SKETCHES,

ESSAYS AND TRANSLATIONS.

13061

BY THE LATE

FRANCIS WALKER GILMER,

OF VIRGINIA.

BALTIMORE:

FIELDING LUCAS, JUN.

1828.

211.1-

DISTRICT OF MARYLAND, ss.

BE IT REMEMBERED, That on this second day of January, in the fifty-second year of the Independence of the United States of America, FIELDING LUCAS, Jr., of the said District, hath deposited in this office the title of a book, the right whereof he claims as Proprietor, in the words following, to wit:

"Sketches, Essays and Translations. By the late Francis Walker Gilmer, of Virginia."

In conformity to an Act of the Congress of the United States, entitled, "An Act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned;" and also to the Act, entitled, "An Act Supplementary to the Act, entitled, 'An Act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies, during the times therein mentioned,' and extending the benefits thereof to the arts of designing, engraving, and etching, historical and other prints."

PHILIP MOORE,
Clerk of the District of Maryland.



14972

J. Robinson, printer.

BIOGRAPHICAL NOTICE.

FRANCIS WALKER GILMER, the author of these essays, was one of the most interesting young men that Virginia has ever produced. He was cut off very early in life; and the following effusions, brilliant as they are, afford but an inadequate idea of the vigour and comprehension into which his mind was expanding at the period of his death.

He was the youngest son of **Doctor George Gilmer**, an eminent physician, of Albemarle county in Virginia; a gentleman not less distinguished for his classical attainments, his wit and eloquence, than for his professional skill. **Doctor Gilmer** resided in the immediate neighbourhood of Monticello, and enjoyed throughout his life, the intimacy and friendship of **Mr. Jefferson**. The neigh-

before he died, as remarkable for the digested method as the extent and accuracy of his attainments.

He studied law in Richmond, in the office of William Wirt, the present Attorney General of the United States ; and commenced the practice in Winchester, and the neighbouring counties in the valley of Shenandoah. His success was highly flattering—and in the year 1818 he removed to Richmond with the view of continuing his practice on that more publick and more extended theatre. Here there is no reason to doubt that he would also have succeeded had his health and strength been equal to the duties of so laborious and exhausting a profession.

In common with other distinguished Virginians he took a deep interest in the success of the University of that state; and on account of his own superiour and general attainments in science, he was offered his choice of either of the professorships—de-

clining this offer from his reluctance to give up his profession, he was, in the spring of 1824, prevailed on by the influence of Mr. Jefferson, to go to England and procure professors from the universities of Oxford and Cambridge. The excursion was very delightful to him from his intimacy with English literature and the feelings of veneration for the seats of science and the general localities of England, which a fondness for their literature never fails to inspire. These he had an opportunity of indulging—and he executed his commission in a manner most honorable and advantageous both to himself and the University. In the fall of 1824, he set sail on his return home, with improved health.—But the voyage was protracted and disastrous, and brought on the disease which finally ended in his death.

After being sometime on shore his health was, in a measure, recruited; but his constitution had received such a shock, that

he was now willing to retreat from the labours of his profession, and he accepted the professorship of law in the University of Virginia. With his talents, attainments, ardour and industry, there can be no doubt of the honours with which he would have distinguished that chair, had it been the pleasure of heaven to spare him. But it was otherwise decreed. He never delivered a lecture ; but after many vain attempts to arrest the disease that was consuming him, he died at the residence of his uncle, George Divers, in the county of Albemarle, on the 25th day of February, 1826, and in the 36th year of his age.

The variety, extent and accuracy of his attainments in science and literature, the high tone of his character and the splendour of his conversation, introduced him to the acquaintance and admiration of most of the distinguished men in the United States. Like his father, he was a great favourite with Mr. Jefferson; and the celebrated Por-

tuguese philosopher, Mr. Correa, was always well pleased when he could prevail on Mr. Gilmer to accompany him in his scientific tours through the Union, which he did on several occasions. Mr. Gilmer had many and warm friends among the most eminent men in our country. His virtues were great and attracting. He was brave, high minded, open and honorable. His colloquial powers were equalled by very few men of the age. His apprehension was quick ; his wit pregnant ; his sallies of imagination highly poetick ; his stores of knowledge such as would have done honour to a hoary head ; his language copious and rich even to exuberance ; his manner very prompt and spirited, and his style surprizingly beautiful and felicitous. His conversation was indeed a perfect banquet to every one who had a taste to perceive or a heart to feel. It is impossible to contemplate the death of a young man so gifted with talents, so fraught with the

treasures of learning, and so full of the noblest promise, without feeling anew the truth of Solomon's apostrophe to the vanity of all sublunary things.

On the merits of the following essays it is needless to remark. The reader will not be forestalled in his judgment. The sketches which stand in the front, have been, in part, already before the publick. The reader will probably differ very often from the writer as to the merits of the individuals on whom he comments, but it is presumed he will at least admit, that the writer of the Sketches had a happiness in hitting off his own sense of these characters, which has been rarely equalled in any age. The reply to Jeremy Bentham, though on a subject less popular than the Sketches, evinces, perhaps, superior acuteness and force of mind, and has been pronounced by competent judges, to be a fine specimen of dialecticks and conclusive in point of argument on the particular subject in dispute.

The reader will bear in mind that these are the youthful works of a young man, who may be truly said to have been almost literally self taught—and considered in this light, they are certainly well calculated to give a high opinion of the mental force of the author, and to add a new stimulus to the energies of all young men similarly circumstanced. In this light, if in no other, they are fairly entitled to the patronage of the community.

PREFACE

TO THE FIRST EDITION.

THIS little bagatelle was begun in an idle hour, and has been finished, to beguile the *ennui* of solitude and sickness, in an absence from friends and books. I shall be glad if it can amuse any one, and in the hope that it may, give it to the publick. I am sure no apology is necessary, to the gentlemen whose names I have taken the liberty to mention, since they are all too well established in life, by a long and illustrious display of the greatest talents, to need the praise, or suffer by the censure, (even if any had been passed) of one, whose ill health, whose unequal endowments, whose slender advantages of education, will never enable him to emulate their glory, or do more than feebly contribute to propagate their merited fame.



P R E F A C E

TO THE SECOND EDITION.

THIS trifle was originally written with no higher expectation, than that it might amuse, for a moment, the idle or inquisitive. It was carelessly composed, and contained many inaccuracies of expression, which were multiplied by the printer. The interest taken in it by the publick, has induced the publisher to undertake another edition, in which some of the errors of the first have been corrected.

It will be observed, that a speaker of celebrity, not known to the author when he wrote the first edition, has been introduced into this. The delineation of several of the others has been extended. What it was thought proper to add to that of Mr. PINNEY, will be found in a short appendix, supplanting the place of all the notes to the first edition. It was at first the intention of the author, to incorporate this new matter into the text ; but he was unwilling to trust himself to retrace those imperfect lines, which had been drawn, according to the ability of the limner, from the life. He could not, perhaps, in the regret he feels for the loss of the original, have allowed it had a blemish ; and might have been accused of weakness, should he efface traits, which to others may appear striking and charac-

feristick. He candidly acknowledges, that a principal motive with him for correcting the copy for a second edition, was to bear still farther testimony to the merits of Mr. Pinkney, whose lamented death will rescue him from the imputation of being governed by any but a generous motive, in submitting it to the publick.

SKETCHES
OF
AMERICAN ORATORS.

AN unrestrained freedom of opinion, and frequent political discussions, make a certain facility of speech, and a pertinacity in opinion, a part of the American character.— While constant habits of business, by precluding the indulgence, and even the formation of a tasteful curiosity, render our countrymen but coarse judges of eloquence.— They have, however, so few public amusements and opportunities of acquiring information, that any one who can entertain them with jests, and give a few unsatisfactory hints on the subject of deliberation, is acknowledged to be not only an amusing speaker, but a considerable orator. What La Bruyere calls the popular estimate of eloquence in his day, is in our country the national, and almost the only one. “The people (says he) understand by eloquence, the facility which some possess, of speaking uninterruptedly for a long time, with violence of gesture, a clear voice, and strong lungs;” and if eloquence be as he says, “that gift of the soul, which renders us masters of the hearts and minds of others; which enables us to inspire them with whatever feelings, and persuade them to whatever opinions we please,” there can be no appeal allowed from this

popular judgment. Indeed, it is the opinion of the great master* of oratory, both in its theory and practice, that whoever is supposed to be the most accomplished speaker by the people generally, must be admitted to be so by men of taste. This is true in the sense in which Cicero means it, but this test has of late begun to be applied not only as the standard of relative, but of absolute excellence ; and, accordingly, men competent to decide, have been made to yield to the popular voice, not merely as to who of many speakers is best, but whether any of them be really good. This is still the province of criticism ; and without constituting myself one of the odious dispensers of its law, I being one of the people, am entitled to my opinion as to who of several good speakers is best, and having studied something of the principles of eloquence, I may be allowed to inquire, whether any of them be real orators.

The first time that I ever felt the spell of eloquence was when a boy, standing in the gallery of the capitol in the year 1808. It was on the floor of that house I saw rise, a gentleman, who in every quality of his person, his voice, his mind, his character, is a phenomenon among men. His figure is tall, spare, and somewhat emaciated : his limbs long, delicate, slow and graceful in all their motions ; his countenance with the lineaments of boyhood, but the wrinkles, the faded complexion, the occasional sadness of old age and even of decrepitude : possessing, however, vast com-

* Hume has adopted this maxim of Cicero in his *Essay on Ancient and Modern Eloquence*.

pass and force of expression. His voice is small, but of the clearest tone and most flexible modulation I ever heard. In his speech not a breath of air is lost ; it is all compressed into round, smooth, liquid sound ; and its inflections are so sweet, its emphasis so appropriate and varied, that there is a positive pleasure in hearing him speak any words whatever. His manner of thinking is as peculiar as his person and voice. He has so long spoken parables, that he now thinks in them. Antitheses, jests, beautiful conceits, with a striking turn and point of expression, flow from his lips with the same natural ease, and often with singular felicity of application, as regular series of arguments follow each other in the deductions of logical thinkers. His invective, which is always *piquant*, is frequently adorned with the beautiful metaphors of Burke, and animated by bursts of passion worthy of Chatham. Popular opinion has ordained Mr. RANDOLPH the most eloquent speaker now in America.

It has often been objected to this gentleman, that his speeches are desultory and unconnected. It is true ; but how far that may be a fault, is another question. We are accustomed in America, to look upon the bar as furnishing the best, and nearly the only models of good speaking. In legal discussions, a logical method, an accurate arrangement, and close concatenation of arguments is essential ; because the mode of reasoning is altogether artificial, and the principles on which we rely, positive and conventional. Not so in parliamentary debate. There, questions are considered on principles of general policy and justice ; and the topics are capable of illustration by facts and truths

familiar to all, and in fact pre-existing in every mind. It were idle to prove that, of which all are convinced; and Mr. Randolph's brief touches, his strong and homely adages, are better arguments to a deliberative body on matters of policy and state, than a discourse divided into seventeen parts, and each part sub-divided into as many more, and expanding itself like a polypus into a whole essay: this infinite divisibility of arguments, like that of matter, may amuse schoolmen, but would put a statesman to sleep: in a parliamentary debate, this endless prolixity and prosing, would be insufferable. Withal, I grant that questions often occur in Congress, in which more method, precision, and fullness than Mr. Randolph possesses, would be desirable.

An opinion prevails, too, that Mr. Randolph is successful only in the ludicrous. He is doubtless eminently gifted in his qualifications for the comick and satirical; I would mention his attack upon the answer to "war in disguise," as an instance: "against six hundred ships in commission (said he,) we enter the lists with a three shilling pamphlet?"—the copious and splendid imagination of Burke, could not have placed the unequal contest in a stronger light. Though he possess an exquisite fancy for repartee and wit, it is far from being his only, or his brightest endowment. Like a genuine orator, he can touch all the strings of the mysterious harp into which we are so "fearfully and wonderfully" wrought. Occasions of pathetick eloquence do not often occur; and even when they do, the very attempt has been brought into some discredit, by the pompous and puerile sentiments of Counsellor Philips, and the yet more childish weakness of some of

our *multum lacrymans* orators, who, like Lord Eldon, cannot acknowledge two and two to make four, without shedding tears. Whenever Mr. Randolph has attempted the tender strains of eloquence, he has had the same success as in the lighter and more comick parts he chuses to play. When he deplores the death of a friend, his grief, like that of Achilles for Patroclus, is violent and insatiable; his expression of it, deep and tragical. When he invokes the national sorrow for the fall of the brightest star in the constellation of our naval glory, he must be cold indeed, who is insensible to the thrilling tones of that persuasive tongue, which like the sad notes of the Orphean lyre, might draw "iron tears down Pluto's cheek."*

The style of his eloquence generally, it must be admitted, is not favorable to the excitement of any deep or permanent passion; such effects can only be produced by successive impulses. It is not the momentary violence, but the continued impetus of the tempest, which lifts the billows in aspiration to the heav-

* Note.—The remarks with which Mr. Randolph introduced his motion to adjourn, and attend Decatur's funeral, were truly pathetick and beautiful; it is much to be regretted, that they have not been preserved. He has in conversation on this subject, often shewn his absolute dominion over all our affections in the most striking manner. Not girls, nor old women, but hardy warriors have wept, at his eloquent lamentation over the fall of that accomplished hero, "the champion and the flower" of American chivalry. He sported with the rough sons of the ocean, as Ariel frolicked with Caliban and Trinculo; sometimes diving into the billows, sometimes playing in the plighted clouds.

ens. We must, too, be persuaded, and not commanded to sympathise. Whereas, every thing in the manner, the mind, the voice of Mr. Randolph, is imperious. His genius, too, is fickle, and continues but a short time under the influence of any one emotion. The epithets applicable to his style of speaking are 'striking and brilliant.' His deliberate, graceful, and commanding delivery, cannot be too much praised; his total want of method cannot be too much condemned.

Gifted with a fine fancy, a prompt and spirited elocution, and stamped with a character ardent and impetuous; obeying only the impulse of the moment, speaking without premeditation, and acting without concert, he was more successful in early life than of later years: the effusions of his youth possess a freshness and glow, which his more recent efforts want. I am sorry there should be any one who can view with pleasure, the fading splendour of such an intellect: I have seen and heard it a volcano, terrible for its flames, and whose thunders were awful, instead of that exhausted crater, covered with scorix and smoke, to which a listener in the gallery lately compared it.

One of the most remarkable speakers who ever appeared at the American bar, has already been described by an abler hand.*—Every one has heard of the gigantick abilities of JOHN MARSHALL. As a most able and profound reasoner, he deserves all the praise which has been lavished upon him. And in answer to those who would doubt the powers of his mind, from the tedious and heavy narrative of his history, I would say no more than,

Non omnia possumus omnes.

* The British Spy.

A capacity for speaking and writing well, have been so rarely combined, that the wonder is not to see them apart, but to find them united. His mind is not very richly stored with knowledge ; but it is so creative, so well organized by nature, or disciplined by early education, and constant habits of systematick thinking, that he embraces every subject with the clearness and facility of one prepared by previous study to comprehend and explain it. So perfect is his analysis, that he extracts the whole matter, the kernel of inquiry, unbroken, undivided, clean and entire. In this process, such is the instinctive neatness and precision of his mind, that no superfluous thought, or even word, ever presents itself, and still he says every thing that seems appropriate to the subject. This perfect exemption from any unnecessary encumbrance of matter or ornament, is in some degree the effect of an aversion from the labour of thinking. So great a mind, perhaps, like large bodies in the physical world, is with difficulty set in motion. That this is the case with Mr. Marshall's is manifest, from his mode of entering on an argument both in conversation and in publick debate. It is difficult to rouse his faculties ; he begins with reluctance, hesitation, and vacancy of eye ; presently his articulation becomes less broken, his eye more fixed, until, finally, his voice is full, clear, and rapid, his manner bold, and his whole face lighted up, with the mingled fires of genius and passion : and he pours forth the unbroken stream of eloquence, in a current, deep, majestick, smooth, and strong. He reminds one of some great bird, which flounders and

flounces on the earth for a while, before it acquires the impetus to sustain its soaring flight.

The characteristic of his eloquence is an irresistible cogency, and a luminous simplicity in the order of his reasoning. His arguments are remarkable for their separate and independent strength, and for the solid, compact, impenetrable order in which they are arrayed. He certainly possesses in an eminent degree the power which has been ascribed to him, of mastering the most complicated subjects with facility, and when moving with his full momentum, even without the appearance of resistance.

The powers of these two gentlemen are strikingly contrasted by nature. In Mr. Marshall's speeches all is reasoning; in Mr. Randolph's every thing is declamation. The former scarcely uses a figure; the latter, hardly an abstraction. One is awkward; the other graceful. One is indifferent as to words, and slovenly in his pronunciation; the other adapts his phrases to the sense with poetick felicity; his voice to the sound with musical exactness. There is no breach in the train of Mr. Marshall's thoughts; little connexion between Mr. Randolph's. Each has his separate excellence, but either is far from being a finished orator.

Perfection is an unit. For the idea of perfection not only excludes every defect, but comprehends every attribute essential to its character. Hence, that there should be two perfect orators differing from one another in the style of their eloquence upon the same subject, is inconceivable. Quintilian's *pares majis quam similes*, applies only to such as have fallen

equally short, but by different routes, of that ultimate excellence which includes every requisite of genuine eloquence. To this point, Cicero thinks, not even Demosthenes attained, who then shall have the presumption to aspire to reach it?

I now propose briefly to consider the character of those speakers, who stand most conspicuous at the several bars of the United States.

Mr. EMMET, of New-York, must alone sustain the honours of his profession in that populous metropolis; and indeed he is fully adequate to the task. In his personal appearance there is nothing very remarkable. He is a compactly formed gentleman of the ordinary height, and stooping a little in the shoulders. His face bears a strong expression of good nature, which every one admits him to possess. He is short sighted, but the defect scarcely diminishes the fine expression of his clear, bright, blue eye.

He was educated for the profession of medicine at the university of Edinburgh, and, I have heard, gave early and unequivocal indications of pre-eminence, in whatever pursuits he might afterwards be engaged. He was distinguished among his fellow students for a natural and easy eloquence, with great quickness of comprehension. The loss of his elder brother, whose manly character, and uncommon capacity for public speaking, had placed him at the period of his early death among the first advocates of Ireland, induced Mr. Emmet to turn his attention from the practice of medicine, to the more alluring pursuit of forensic glory. Though more advanced in life than students generally are when commencing the study of law, his mind was

so accustomed to the generalizations of science, that in two years he reduced the chaos of English law to an organized creation. The habit of recurring to first principles led him often to those fountains, of which Coke, and Hale, and Mansfield had drunk; the eager curiosity of his inquisitive mind, has explored, too, the broad foundation of general jurisprudence, so little disturbed by the more timid foot of modern enterprise.

I have often doubted whether it be not better to acquire the habit of arrangement, in studies which allow it to a larger extent, than to embarrass the first efforts at combination with the endless and minute distinctions of law. It is worthy of observation, that several of the most distinguished orators of ancient as well as of modern times, were late in appearing before the publick. Demosthenes, Cicero, Lord Erskine, and Patrick Henry, were each about 26 years of age at the period of commencing their forensick labours. Sir James M'Intosh and Mr. Emmet were still later, and were both educated for another profession. Cicero says that an orator should know every thing, *ex rerum cognitione, efflorescat & redundant oportet oratio*. Be that as it may, these preparatory studies have stored the mind of Mr. Emmet with a greater variety of knowledge than is possessed by his competitors, and though he represes the exhibition of science, it imparts an extension of thought, an amplitude of illustration, a compass and propriety of expression, which, aided by the bold and spreading fluency which belongs to Irish eloquence, constitute him, altogether, one of the most pleasing speakers, as he is certainly one of the profoundest lawyers, I ever heard. He sees his subject

most distinctly, handles it with the ease of a master, and exhibits every part of it in a natural succession, without an ostentatious parade of his strength. He possesses, too, in a high degree, the natural and simple pathos of his nation, with all the openness of heart, and generosity of temper, which can excite the admiration, or win the affections of men. He is irresistible before a jury, able and adroit before a court, and fascinating in private life. He has acted with such gentleness and dignity through all the vicissitudes of affliction, persecution, imprisonment, and exile, that a disinterested spirit loves to indulge itself in the contemplation of his present prosperity and fame.

He is most remarkable for the ease with which he comprehends his cause, his ready command of all the law applicable to the case, the extent of his combinations, the accurate logick of his deductions, the graceful symmetry of the several parts, and the animated glow of the whole argument. One observes in all his speeches the exertion of a mind naturally capacious, stored with various learning, and adorned, but not encumbered, by the tasteful drapery of an ardent imagination.

Mr. PINKNEY, of Baltimore, has occupied a large space in the publick eye, as an advocate, since his return from Europe. In admitting popular fame as an evidence of merit in a publick speaker, there are sometimes extraneous circumstances which should be taken into consideration. Of these several have combined to make Mr. Pinkney's name more familiar to the American people, than his mere forensick abilities, great as they certainly are, would have done. His re-

aidence in England during several years of important intercourse with its government, in a high station of national confidence; his appointment to the office of attorney general on his return; and his continuance as a successful practitioner at the federal court since his resignation, have all offered advantages for the extension of his professional popularity, subordinate only to the claims derived from his consummate abilities. Many persons, without considering how much of Mr. Pinkney's fame is fairly to be ascribed to these adventitious circumstances, have allowed him to occupy the first station at the American bar. Divesting him of these borrowed attractions of which he stands in no need, let us examine the justice of his pretensions to this captivating superiority.

His person is muscular and vigorous. His face broad, large, and red, with an expression of strong, good sense, rather than of vivacity or genius. His whole appearance is that of one who has been accustomed to bodily labour, more than to intellectual exertion. He is a young looking man for his age, and even its marks seem the traces of thought more than of time.

His manner of speaking, I have been told, is very much that of Westminster Hall. It is certainly new among us, and appears to be affected. His body is sometimes thrown forcibly forward, and then drawn violently back: his fists often clenched, and his arms, which are never much raised, bent before him in the attitude of a boxer. Sometimes he appears to bear the argument on his shoulder; and, like Sisyphus, to heave it with labour up a high hill; the simile, however,

goes no farther, it seldom recoils upon him. His whole action is too constrained to be graceful, but it is often very impressive. It wants variety, ease, and moderation. His voice is firm and strong, but not musical in its tones or cadence: its changes are occasionally abrupt, which produces the effect of harshness.

His ambition is intense and ever-burning. During his diplomattick mission abroad, he was far from relaxing the severity of his forensick exercises. Like Achilles, tho' withdrawn from the field, his arm was not unnerved in indolent repose. He obtained in his recess a Vulcanian armour, and renewed the battle with a freshness of strength, a vigour of exertion, more propitious to victory than unremitted contention might have proved. He saw in England the finest models of forensick oratory, which the last fruitful age produced: he was long enough there, not only to discipline his manner, but to enrich his diction, by intermixing the more varied and splendid phrase of its literary circles. It was with all these advantages, increased by the expectation with which we look on the first exertion of talents which have already adorned their profession, that Mr. Pinkney resumed his place in 1812. He has surpassed every conjecture that had been formed of his improvement. He has great address in the management of his cause in all the stages of its preparation for argument: he is studious to engage his adversary exactly on that ground, which he thinks most advantageous to his client; he opens the case to the court in a luminous and rapid narrative; shews the important points of it in the strongest light; and forti-

fies his positions with reason, rather than with authority. He delights to recur to those great fundamental principles of human intercourse, which have so often tasked the powers of the deepest research, the most varied learning, and the most splendid imagination. Hence, some of the most glittering shafts of his quiver, are drawn from the rich and magnificent armoury of Hooker and Chillingworth, weapons of celestial temper! Then his energy is wielded so directly against his antagonist, that he imparts the animation of contest to every thing he says. This is a main ingredient of the interest with which we listen to Mr. Pinkney. It is not a tranquil discussion, but an intellectual battle. His client and his claims are frequently forgotten, in the interest with which we behold his patron extricate himself from a breach made in his fortifications, or the rage with which he pursues the flying advocate of a defenceless cause. He then pours with uncontrollable fury the *ardentia verba* in precipitate torrents: which united to his vehement, I had almost said angry manner, make his eloquence characterised by the most irresistible impetuosity; it is a conflagration ravaging the earth. There is a dazzling brightness in all his conceptions, an almost painful glare, which requires relief in softer shading, milder imagery, and less burning words. The splendour of diction, and magnificence of metaphor, which is softened in Burke's eloquence by so many gentler touches, is never over-powering, because we are prepared for the blaze of his meridian brightness, by the gradual succession of Aurora to Lucifer, and of the sun to Aurora; but the impatient ardour of Mr. Pinkney's

genius, is never satisfied, until, like "the prince of the lights of heaven," it burns in its noon-tide path, and quenches the ray of every other star. A little more moderation in his manner, and a more marked gradation in the progress of his aspiring mind, would give richness and variety to all his exhibitions. Grattan said of the Irish orator Malone, that "when young his eloquence was ocean in a storm; when old, ocean in a calm, but whether in a calm or storm, the same great element, the sublimest and most magnificent phenomenon of creation." To apply this simile to Mr. Pinkney, his eloquence is too constantly tempestuous. It is not improbable, however, on the supposition that he continues his exertions with unabated ardour, that though now past the meridian of life, he may hereafter exhibit a greater variety of beauties as the ocean subsides, than he has ever yet done in the loudest tumult of its waves. The billows that are now black with impending tempests, or red with reflected fire, when the winds of evening have dispersed the clouds that darkened the mid-day sky, or streaked it with their flashes, may form a combination of beauties, of hoary summits, of azure sides, lighted by the rays of a descending sun, whose mantle of glory covers the deep with celestial hues, altogether, composing a more enchanting, though a less sublime prospect. Boisterous as he now is, we are exhausted by his vehemence, and implore a respite from painful wonder, in simple admiration or softer pity. But the inexorable champion spares neither the timid antagonist, nor the impatient hearer. He perpetually defies the one, and exacts the homage of the other. Had

he fit subjects* to occupy and task his splendid abilities, he would be an overwhelming reasoner, and a powerful declaimer. As I have heard him, there is an almost ludicrous contrast between his gigantick strength, his impetuous rage, his Homerick diction, and the comparative insignificance of his subject.—This intemperate fury of Diomed, this positive love of battle, which no consideration of subject or place can curb, is not prepossessing, though it may be chivalrous. On the contrary, this arrogant and strutting manner, while it “denotes the aspiration of his mind,” never fails to alienate the hearts of his hearers, however he may dazzle their imaginations. In the midst of his brightness there is little warmth: his speeches, though finished, are elaborate; and, in truth, his whole style, matter, and manner, are too studied and artificial. His ornaments are sometimes misplaced, and have always too much the appearance of preparation. Indeed, paradoxical as it may seem, Mr. Pinkney, with his violent manner, his vigorous thoughts, his animated metaphor, is often a cold, and sometimes even a repulsive speaker. This is entirely the effect of affectation, which is, in every form, universally displeasing. Unless one has been so long accustomed to it, as not to perceive its existence, as is already the case with many of Mr. Pinkney’s more devoted admirers. This circumstance gives a real orator the power of modifying publick taste to his own standard, which, we learn in the dialogue on oratory, Cicero did. If Mr. Pinkney’s eloquence should become an object of

* See Appendix.

imitation, his followers should endeavour to unite more feeling to his beautiful declamation. His exhibitions put one in mind of splendid winter scenery, of forests and mountains glittering with sleet, very brilliant to the eye, but cold to the feeling; while, in Mr. Emmet's, we see a summer's prospect of natural luxuriance and verdure, which dazzles less, but charms more. Unless Mr. Pinkney varies his manner, and becomes more natural, I think the publick will become weary of his perpetual affectation of the same things.—This uniformity does not indicate a genius of the first order, which alternately awes by its terrible force, and charms with its tender persuasion; which is sometimes a trumpet of war, inspiring courage or striking trepidation; and then a shepherd's horn, before the first breath of morning has shaken a leaf of the forest, the hills re-echo its mellow notes, the streams unite their soft murmurs, and all nature responds to its thrilling vibrations.

It was in the extraordinary variety of his great talents, that the illustrious Henry was so conspicuously pre-eminent over all his competitors; in him all the fascinations of eloquence were combined. It was he alone, of our country, who wielded all the terrible agents, and controlled all the secret spells of the moral world: who appalled oppression, restrained revenge, arrested anger, wakened sleeping pity, raised dejected hope, and cheered the "grim visag'd comfortless despair." The most eloquent speaker who ever heard him, described his oratory, as the joint effect of the genius of Garrick and of Shakspeare. He had the same knowledge of the human character, and

the same sway over the human heart as Shakspeare; but he described natural objects, and embellished moral subjects, with a boldness of metaphor not surpassed by Homer. His language burst forth with the spontaneous force and majesty of Pindar. His reasoning was profound, and if it seemed obvious, it was only from the intense light which his genius shed upon it. If his judgment ever appeared bewildered, it was not from obscurity of intellect, but because his mind like the throne of Milton's heaven, was "dark with excessive bright." No speaker of modern times, not even Sheridan in arraigning the oppressor of provinces, the abuser of the usurped prerogative of kings, ever produced a greater effect upon his auditory, than was excited in resisting the British claims against American debtors by Patrick Henry. He was one of the few men who ever lived, who really wrought the prodigies we hear ascribed to ancient eloquence. He could calm the wildest tumult of the people, and agitate them as ocean with a tempest. The levin brand of heaven flashing upon the earth, arresting the careering steeds of Diomed, and appalling their affrighted driver, was not more awful and blasting than his denunciations against guilt. *O dii boni! quid quæso, nos aliud agimus, aut quid aliud optamus.*—It is a subject of regret rather than of congratulation, that the spurious fragments reported as his speeches have reached posterity. But paltry as those fragments are, when compared with the glorious perfection of the original, we can sometimes discover in them the disfigured lineaments of greatness. Mr. Pinkney possesses none of this sweet, this sublime musick, with

which Henry melted, rapt, and fired the soul: or more properly, he has not exhibited it, probably from the want of a fit occasion.

I hardly know what apology to make to LITTLETON W. TAZEWELL, of Norfolk, for dragging his name from the obscurity which he seems to court, but is unable to win. He has shrunk from the great national amphitheatre, the olympick games, where it is the glory of Mr. Pinkney to challenge and to conquer, to an obscure seaport town. But more confident in his powers than he is himself, I do not fear a comparison with this veteran of the bar of the supreme court.

His person may be a little above the ordinary height, well proportioned and having the appearance of great capacity to endure fatigue. His complexion is swarthy; his muscles relaxed as from intense thought long continued. His features are all finely developed. His eyes are large, full, and of a dark blue colour, shaded by thick black brows a little raised, as if looking on a vast expanse of distant prospect. A manner firm, manly, dignified and free. *Vox permanens verum subrauca*, its tremulous and occasionally interrupted accents, give unusual tenderness to its tones. But it is neither the Ciceronian person, nor the Chatham face, nor the voice of Anthony, that we are to admire in Mr. Tazewell. It is the great and clear comprehension; the freshness and rapidity with which every thing luxuriates on the generous soil of his mind, which is farther removed from even occasional sterility, than in any one I have known. This soil has no succession of seasons, the sun which warms it is never for a moment obscured by cloud or by eclipse, there

reigns a bright, a genial, a perpetual summer. His perceptions are as intuitive and as strong as those of Mr. Marshall. He has as much intrepidity of intellect as Mr. Pinkney, and great boldness but no insolence, no exultation, of manner. He wants only ambition to make him rival, nay, perhaps even to surpass the accomplished champion of the federal bar. His fault is subtilty, and a provoking minuteness of detail in his argument. He sometimes shews legal and rhetorical artifice where there is not the least occasion for either. These defects, however, have been acquired in the long habit of addressing subordinate tribunals, where his genius riots in its strength; and are so little connected with the original organization of his mind as to be easily cured.

There is something absolutely painful in reflecting on the destiny of this extraordinary man. Endowed with the best and most various gifts I ever knew concur in any individual; possessing a vast fund of information, and indefatigable in whatever he undertakes; he has a thousand times exhibited talents equal to any occasion, and is still unknown to the world, and until lately, was almost unheard of beyond the limits of his native state. One may easily reconcile to his philanthropy, that "some mute inglorious Milton," may rest in every neglected grove, because it requires a strong effort of imagination, to suppose the clod of the valley, ever to have been "pregnant with celestial fire;" but we have not this comfort to allay our mortification, when we see talents of the purest, and the brightest ray, united to the noblest qualities of the human heart, emitting their lustre in broad day light, and

to the publick eye, unnoticed or forgotten. The sentiment which it excites in one is not so much sympathy with the object, as regret for the publick loss in not appreciating the rarest gifts of providence to man. The individual himself seems too elevated to permit a vulgar pity. The world is too contemptible in his eyes, to render its praise or its censure matter of interest. Perhaps there is something in this publick indifference, even congenial to one conscious of the inexhaustible resources, and the unconquerable power of his mind. The eagle loves the awful solitude of her sublime cliffs, which remove her far from the importunate chattering and impertinent intrusion of magpies and daws ; but it is truly a misfortune to the country, that the imperial bird should sleep on her lonely eyrie, and leave the supreme dominion to region kites, and mousing owls.

I had long been curious to see the natural vigour, fertility, and adroitness of Mr. Tazewell, contrasted with the consummate art, and accomplished prowess of Mr. Pinkney ; and participated in the publick disappointment (as I must ever deplore the cause which produced it) when the death of Mr. Pinkney, rendered it impossible, just at the moment that the contest was to take place. But a few days before Mr. Pinkney's death, (a circumstance which probably hastened it,) he had exerted himself very much in the argument of a cause of great interest to his client. Immediately the discussion was over, and while the accents of that *cycnea vox*, reverberated in the ears of all who heard the last effort of his eloquence, he began the preparation for his argument with Mr. Tazewell. His appli-

fies his positions with reason, rather than with authority. He delights to recur to those great fundamental principles of human intercourse, which have so often tasked the powers of the deepest research, the most varied learning, and the most splendid imagination. Hence, some of the most glittering shafts of his quiver, are drawn from the rich and magnificent armoury of Hooker and Chillingworth, weapons of celestial temper! Then his energy is wielded so directly against his antagonist, that he imparts the animation of contest to every thing he says. This is a main ingredient of the interest with which we listen to Mr. Pinkney. It is not a tranquil discussion, but an intellectual battle. His client and his claims are frequently forgotten, in the interest with which we behold his patron extricate himself from a breach made in his fortifications, or the rage with which he pursues the flying advocate of a defenceless cause. He then pours with uncontrollable fury the *ardentia verba* in precipitate torrents: which united to his vehement, I had almost said angry manner, make his eloquence characterised by the most irresistible impetuosity; it is a conflagration ravaging the earth. There is a dazzling brightness in all his conceptions, an almost painful glare, which requires relief in softer shading, milder imagery, and less burning words. The splendour of diction, and magnificence of metaphor, which is softened in Burke's eloquence by so many gentler touches, is never over-powering, because we are prepared for the blaze of his meridian brightness, by the gradual succession of Aurora to Lucifer, and of the sun to Aurora; but the impatient ardour of Mr. Pinkney's

genius, is never satisfied, until, like "the prince of the lights of heaven," it burns in its noon-tide path, and quenches the ray of every other star. A little more moderation in his manner, and a more marked gradation in the progress of his aspiring mind, would give richness and variety to all his exhibitions. Grattan said of the Irish orator Malone, that "when young his eloquence was ocean in a storm; when old, ocean in a calm, but whether in a calm or storm, the same great element, the sublimest and most magnificent phenomenon of creation." To apply this simile to Mr. Pinkney, his eloquence is too constantly tempestuous. It is not improbable, however, on the supposition that he continues his exertions with unabated ardour, that though now past the meridian of life, he may hereafter exhibit a greater variety of beauties as the ocean subsides, than he has ever yet done in the loudest tumult of its waves. The billows that are now black with impending tempests, or red with reflected fire, when the winds of evening have dispersed the clouds that darkened the mid-day sky, or streaked it with their flashes, may form a combination of beauties, of hoary summits, of azure sides, lighted by the rays of a descending sun, whose mantle of glory covers the deep with celestial hues, altogether, composing a more enchanting, though a less sublime prospect. Boisterous as he now is, we are exhausted by his vehemence, and implore a respite from painful wonder, in simple admiration or softer pity. But the inexorable champion spares neither the timid antagonist, nor the impatient hearer. He perpetually defies the one, and exacts the homage of the other. Had

Had one with so rich a genius, with such a soul for eloquence, as Mr. Wirt certainly possesses, seen Mr. Henry in some of his grandest exhibitions, I should not now have to deplore the want of a finished orator at any American bar. But that bright meteor shot from its mid-heaven sphere too early for Mr. Wirt, and the glory of his art descended with him. No phoenix has arisen from his ashes. But I am inclined to think there is more than one orator now living in the United States, who, on such occasions as Henry thundered, lightened and electrified the people, could wield the Olympick bolt with no feeble hand. To obtain the fame of an orator, there must be subjects demanding the highest decorations of eloquence. The accusation of Demosthenes against his guardian, or Cicero's defence of Quinctius and Archias, would never have made their names immortal. It was the fire with which they consumed Philip, and Cataline, and Verres, and Antony, which has covered them with unfading glory. It is an old perversity of our nature, to admire what is past and to undervalue what is present. This is in the nature of our constitution, for when young, we are more susceptible of pleasure, and take a pride when old, in persuading others that we have seen more wonderful things than they. One might have heard at Rome, from those who were old when Cicero was young, that he was inferior to Crassus, to Antony, and to Hortensius. But the universal tradition of the effects of Mr. Henry's eclipsing eloquence, silences all these cavils by which lesser orators might vindicate the equality of their pretensions.

The great natural endowments possessed by Mr. CLAY as an orator, should not be omitted in this brief delineation of some few of our publick speakers. His stature is commanding from its height, and the freedom of all his motions. He is not graceful, but earnest, impressive and unrestrained ; free and wild as the elk of the forest, in his gestures. This quality imparts an indescribable charm to his action, in this timid and affected age, in which we hear men bawling vociferously and passionately, with their fingers and hands moving all the while as gently as if they played a dirge on the lute ; with their elbows close to their bodies, as if pinned to their hips.

Mr. Clay's voice has prodigious power, compass, and richness, and in some of its base tones thrills through ones whole frame. He is aware of its seduction, and exerts it with great effect in the moderate, as well as the more impassioned parts of his speeches. Such is its fascination, that it gives novelty and dignity even to familiar expressions.

His mind is sagacious in selecting topicks best adapted to his purpose, comprehensive and fertile, in suggesting arguments and illustrations to enforce them ; but is neither enriched by various information, nor cultivated by the study of polite literature. It has been developed among men, and in the practice of his double occupations, of law and politicks. The conception of his subject is more oratorical than his powers of execution. The finest passages of eloquence are often marred, by his failure to select the appropriate phrase ; and sometimes by a lame conclusion of a period finely and beautifully begun. But he constantly

redeems himself, by the energy, rapidity, and the variety of his elocution.

His logick is not severe, nor indeed does he appear to design it should be. Even in the most argumentative parts of his speeches, he relies fully as much upon persuading the heart as convincing the understanding; and in place of the refined, subtile, and abstract disquisitions of the lawyer, his *demonstrations* are only the strong, plain views of the subject, which connect it immediately with the business and sympathies of life. He is fortunate in being altogether exempt from that alienating arrogance of manner, with which so many of our present speakers are infected. I have known a gentleman so confident of his powers of reasoning, that he disdained any thing in argument short of absolute proof. All his speeches were *indisputable demonstrations*; the only misfortune was, that the reasoning convinced no one, and the manner offended every body.

Mr. Clay's best speeches, though perhaps the matter be studied and arranged in his mind, owe the life and freshness of their colouring to the ardour of the feelings which kindle in the progress of the discussion. Though the ornamental parts with which he chuses to embellish them, are often judiciously selected, he has not the power which Mr. Pinkney eminently possessed, of finishing the images with the minutest exactness. Mr. Clay's metaphors are often incongruous and mixed; his diction frequently wants oratorical dignity; his words and phrases are sometimes recalled, and modified: while Mr. Pinkney was clear in his method, correct in his ornament, rapid in argument, and truly

magnificent in the poetry of his diction, and the profusion and richness of his fancy. His vehemence was greater than that of Mr. Clay; yet he had the control of himself even in his extravagancies. Mr. Clay's voice, however, is superiour; and his action more natural and free. It is too late in life, I fear, for Mr. Clay to correct the prominent defects of his manner; the recalling his words, remodelling his sentences, the departure from keeping in his images, the familiarity of his phrases, and the divergency of his mind from the line of the argument. But with all these imperfections, he is a powerful, impressive, and affecting speaker. The deep and sonorous melody of his voice, especially in the base notes, has an indescribable charm; though I think he puts it too frequently on its higher and less agreeable tones. It is neither its lowest nor its highest pitch which is most grateful to the ear; but that middle emphasis and varying modulation, which, like the swell of a bugle, makes the region thrill, without a jar.

Mr. Clay's natural advantages as a publick speaker, are inferiour to those of few whom I have seen. His talents are undoubtedly great, his voice the finest I ever heard, his manner bold and original, and his ardour capable of winning the affections and directing the passions of mankind. His defects result from the neglect of his early education. He is consequently one of those rare examples of successful genius, which the enemies of instruction (unfortunately too numerous in our country) constantly select, to prove the all sufficiency of *natural parts* to work miracles; Mr. Henry is another example to il-

illustrate this absurd opinion, and a more favourite one ; because he was guilty of the unworthy affectation of despising letters : armed with these too cases, they are likely to discourage very much all liberal studies. It is a reflection upon the country, that so pernicious an encouragement to indolence and vanity, should need refutation. If this were the proper place to discuss it, I would give these very cases as proofs of the inadequacy of unassisted nature, to insure permanent distinction in eloquence, more than in poetry or painting. Mr. Henry, beside having a mind equal to that of any one who has lived in these later ages, had also a moderate education ; and from the accidents of the time in which he lived, he has become a historical personage. He acted a distinguished part in the most momentous political revolution that is recorded in history ; and, withal, where shall we look for his fame ? Not to his speeches surely. Already has posterity become incredulous of the stories of his eloquence, from the total inadequacy of such as remain, to support his reputation : already do rivals, scarcely heard of while he lived, begin to overshadow his fame. Such a man as Mr. Henry, placed in such circumstances, wanted only a regular education, to equal Cicero or Demosthenes : he had finer occasions for eloquence than either of them, and natural talents perhaps not inferior. Let us not be told that education would have extinguished his fire : why did it not that of the two renowned ancients, reared from their infancy to exercises in speaking ; regularly disciplined in the schools, and learned in all the knowledge which existed at the time ? I might ask the same question, as to Chatham,

Sheridan, and Fox. No, it is not oil that quenches the flame; it feeds and brightens the blaze. From the defects of Mr. Henry's education, it is likely, with all the zeal of his encomiasts, that tradition will be treated as a babbler and gossip, by distant ages; and that men who were no orators, will be supposed to have been more eloquent than he was. Had Cicero's speeches, like those of his rival, been lost, we should have heard of him as of Hortensius and Gracchus, and believed him to have been a fine speaker, but nothing more. Being preserved, had they been inelegantly and negligently written, we might even have doubted that much. I say there is no example of one's having obtained permanent celebrity as an orator, who was not well educated, and well informed. Ignorant persons may produce great effects on others more ignorant than they, especially on questions which strongly excite the passions, as was the case with Peter, the hermit, who preached up the Crusade, and fired all Christendom with the fury of planting the cross on the holy sepulchre: but no ignorant person can produce much effect on those more enlightened than himself, upon ordinary questions. Eloquence, then, implies knowledge, and knowledge implies instruction. If there be any thing in our system of education unfavourable to the growth of eloquence, it proves only, that the very end of education itself is inverted; that instead of being taught knowledge, we are taught ignorance; instead of wisdom, folly. Granting this to be the case, it is no argument against learning, though a conclusive objection to our plan of education.

The proper end of education is to teach us the use of our faculties ; as to the actual knowledge we acquire at school, but a small portion of it is of immediate use in the business of life. It is difficult to conceive that one should be more unfit for any exertion of the mind, because the intellect is accustomed to exert itself with promptness and effect. Considering this the principal aim of every rational system of instruction, we can but regard with infinite contempt, the several impostures of the age, by which learning is made easy, languages taught in a few lessons, logick in a few weeks, and children made wise before they are grown. Alas ! the intellectual faculties can no more be accelerated than the growth of our bodies ; and if they could, I fear they would remain slender, delicate and decrepid, through all the period of their sickly maturity.

They who aspire to lasting fame should not deceive themselves. It is an undertaking of the greatest difficulty. Nature and art must combine in an extraordinary manner, to form a mind worthy of the boon, which providence has reserved to a few of its favoured children. There is propriety as well as beauty in the allegory of Ariosto ; in which the names of mortals are scattered by the hand of time upon the waters of oblivion ; most sink at once and forever ; a few are upheld for a while by the gulls and crows that skim the surface ; only two were seen borne aloft in the beaks of swans, which soared to the temple of immortality. This, too, should be remembered, that though our contemporaries are favourable to the success of uncultivated talent, posterity is jealous of it ; distinction is

too enviable to be conferred on one who claims to win it without a struggle.

To return to Mr. Clay; it is certain, that great as his success has been, it is less than it would have been, had his memory been stored with the animating incidents of ancient virtue; his judgment disciplined by the study of the accurate sciences; his imagination corrected by the taste of Virgil and Tully; and his style ennobled by Milton and Dryden. Nor is Mr. Clay destitute of extensive information: he shewed this, in the part he took in the debate on recognizing the independence of the Spanish colonies. Neither is he without education; he derived great advantages, though at a late period of life, from the patronage of a scholar and a patriot,* whose many virtues, though

* I cannot forbear to express my admiration of the generous and well directed benevolence of the late Chancellor WYTHE, who has the honourable distinction to have discovered and patronised the merit of so many men, who have done honour to the country. Good fortune conspired with sagacity, to confer upon a single individual the felicity, of being the patron of Thomas Jefferson, of L. W. Tazewell, of H. Clay, of George Keith Taylor, and of Peter Carr. The two latter are now no more. Both of them lived long enough to do honour to their patron, and to prove their title to be registered with such comrades. Mr. Taylor was one of the most eminent lawyers of his state; acute, profound, logical and persuasive: of fine wit, of exquisite humour, of brilliant fancy, and of the most amiable disposition. Peter Carr was the delight of his friends, from his fine colloquial talents, the simplicity and purity of his style, the correctness of his taste, the frankness of his manners, and his many social virtues.

long concealed from the world by his singular modesty, I am happy to hear, are about to be illustrated by the pen of his most distinguished disciple.

There are in our country but two classes of men who are popular speakers by profession. Lawyers who commence practice early in life with a superficial general education, and an equally shallow knowledge of legal science; who from an ignorance both of local law and of any great principles of universal ethicks, to which to refer the principles of their case, are constrained to resort to common place topicks of justification, founded on the weakness of human nature; subjects of defence equally applicable to every possible case, and of course equally idle in all. To this tendency to a false pathos, which is in some degree the effect of ignorance, the popularity of the speeches of Mr. Curran has a good deal contributed. Mr. Curran is

The fame and the gratitude of such men, is a nobler monument to the memory of Mr. Wythe, than all the pageantry and mummery of the proudest *mausoleum*; heraldry can never figure devices for the perpetuation of such munificence: it is recorded in the living homage and eloquent recognition of the genius which it has developed and adorned. The tribute which Mr. Clay publicly paid, on a recent occasion, to the memory of his benefactor, before the very body which his dignified and courteous manners, his elegant erudition, and his Roman virtue had graced, was ingenuous and affecting. One could not repress the wish, that this fine effusion of a noble feeling, might reach the departed spirit of its object; for if any earthly incense be grateful to the virtuous dead, it must be the praise and gratitude of those, to whom they have shewn kindness in the day of their friendless youth.

certainly eminently gifted with very high powers of eloquence, but is perhaps a dangerous model for imitation; and if to be imitated at all, it can never be after the manner pursued in America. Our young men endeavour to rival him, with no other advantages than a few inaccurate notions of metaphor and trope, drawn from Blair's lectures while at the university: and a confused knowledge of the elementary principles of English law, gathered in a hasty perusal of Blackstone's Commentaries. They do not consider Mr. Curran's discipline in the several branches of severer science; his comprehensive knowledge of history, politics and ethicks: his taste refined by perpetual intercourse with living orators and poets, and an intimate acquaintance with the writings of their immortal predecessors. Then he possesses an original brilliancy of expression, which is the result of these combined causes operating on a naturally fruitful invention and poetick temperament. They should imitate him in these previous studies, and in reading the Latin and Greek poets, before they attempt his passionate and truly dramattick eloquence. Thus far they have succeeded only in copying his defects, and borrowing from him those useless appendages to his declamation, which are incumbrances, not ornaments. Some of them have, however, succeeded, as Rousseau says of the French musical academy, (who were advocates for loud and harsh musick,) "in making a great noise in the world;" but we are consoled by knowing that it will be but of short duration.

It is a discouraging circumstance to see models of eloquence, as of every thing else, sought exclusively

in English literature.—The English themselves recur to antiquity, as the parent of all that is sublime or beautiful in poetry or prose. And the tendency of American taste to a very different style of speaking from that of the best and the worst orators of England, plainly indicates a difference in the national standard of excellence. Nature herself has ordered it, and it is vain for art to resist. Instead of being chilled by the cold damps* of a latitude north of 50°, in a sea-girt island, we have a warm and genial climate, a bright sun, and a blue sky. Our continent is vast, its aspect, frequently picturesque and romantick, is often sublime and beautiful. The rills, and basins, and cascades of England, seem but the mimicry of nature, when compared with those inland seas which are fed by that huge river, the din of whose thundering cataract beats on every hill for forty miles: or with that father of western waters, who, drawing his torrent from fountains of polar snow, warms his mighty stream in a tropical sun before he reaches the ocean. This magnificent scale of nature, this ethereal sky, will impart their influence to the imagination and feelings. Our poets must feed their lamps from the fires of the father of song, whose eyes, yet undazzled “with excess of light,” had stored his mind with that sublime scenery, that poetick drapery with which nature has clothed the countries which dispute the honour of his birth. Lighter bards must drink from the goblet of Anacreon.—Orators must pore over the burning page of Demosthenes: or the more luxuriant decora-

* *Cælum crebris imbribus ac nebulis foedum.—Tac.*

tions of Tully. Let them not do this, either, to the exclusion of the great masters of their own language ; for no one can have a competent knowledge of the copiousness and power of the English tongue, who has not read Spencer, and Skakspeare, and Hooker, and Taylor, and the intellectual giants of that wonderful age. It is no objection to what I have here said, that the works of some of these writers abound with figures and passages of the sublimest eloquence, for they saw the scenery of Greece and Italy irradiated by the genius of Homer and Virgil, and, even then, their imaginations retain deep tints of the northern gloom. Hooker and Taylor, whose sacred ministry led them to the study of oriental learning, have often curiously blended the different strains of eastern and western poetry. Some of the effusions of their "finest frensies" call to our minds the idea of Ossian, or some northern bard, striking the harp of Isaiah. With instruments tuned to a prophet's ear, and swept by a poet's hand, the music must needs be divine ; occasionally it is so, but the periods of celestial harmony, are like visits from the winged hours of bliss, "few, and far between."

The second class of men who are speakers by profession, are those who from ambition or incompetence to succeed at the bar, devote their lives to politicks. Generally educated for the law, they are as ill prepared for the discharge of their duty as the others. They are, however, eager to speak on particular occasions, and do speak, with all the fatiguing superficiality which results from want of information, and act with confusion for want of concert ; and finally leave pub-

lick life with disgust and disappointment, for want of preliminary preparation. Hence we are so often condemned to hear from a sanguine youth on the floor of congress, a piece of florid declamation of half an hour's continuance ; but the bloom perishes without the fruit ensuing. And hence that crowd of self-deluded boys, who think to become orators in a day, by celebrating the anniversary of our independence in a few bombastick sentences. I would recommend to their consideration a fine thought beautifully expressed by Lord Bolingbroke ; "Eloquence has charms to lead mankind, and gives a nobler superiority than power, that any fool may use, or fraud, that every knave may employ. But eloquence must flow like a stream that is fed by an abundant spring, and not spout forth a little frothy water on some gaudy day, and remain dry the rest of the year."

APPENDIX.

[See page 23.]

Mr. PINKNEY lived long enough literally to fulfil this prediction. The powers of his mind seemed to strengthen with his years, and expand with his subject. Of all the exhibitions of his eloquence, his reply to Mr. King in the senate, on the Missouri restriction, was, perhaps, that in which the force of his genius was the most conspicuous and overwhelming, and enough, of itself, to entitle him to the first place among living orators. The dignity of the theatre, the magnitude of the question, the fame of his adversary, alike demanded the exertion of all his faculties. It was a great task he had undertaken, and it was magnified by publick expectation ; he not only sustained his reputation, but surpassed the most exaggerated ideas which had been entertained of his abilities. Seldom in either hemisphere has the English language been the medium of sublimer eloquence. “ He shed lustre upon letters, renown upon congress, glory on the country.” The boastful but misguided advocates of mercy and humanity, weeping over the doom of the fallen African, were overwhelmed with confusion and dismay : their justice proved to be iniquity, their policy ruin, and their charity cruelty.

The United States owe lasting obligations to Mr. Pinkney for having scattered the forces of these political crusaders, before they begun their devastations: and every man proud of the genius of his country must deplore, that the lightning which scathed them will flash no more; that the musick of that radiant sphere is hushed for ever; that the last sound of that magical tongue has died upon the wave of time. Nothing remains of the mighty orator but the renown of his name; nothing of a life devoted to the service of the publick, but the gratitude of his country: He has gone hence, victorious, matchless, unconquerable as a giant. He died in such fullness of strength, that long as was the race of his glory, it seemed prematurely arrested.

It may be well, while the western horizon is yet bright with the departing beams of this luminary, which has now set forever, to call the attention of the youth of our country more particularly to its contemplation. They who are emulous of the fame of Mr. Pinkney, need not think to attain it by any vulgar arts. He owed nothing to personal popularity, or intrigue. He won his celebrity by uncommon genius, and application unrivalled. Possessing, naturally, a quick, clear, comprehensive and most powerful mind, he had informed it with the *lucubration* not of *twenty years*, but of twice that period, devoted unremittingly to the study and practice of law. He was master of his profession, in all its honourable parts. He had enriched and corrected his fancy by a habitual perusal of the best poets; formed his language on a pure and elegant model; and his memory furnished him promptly with the most beautiful and brilliant expressions. In this re-

spect, it is not easy to find his equal among English orators. Burke has an amazing profusion of fine expressions, but they are often too wild and poetick for the business of the bar or senate. The execution of Mr. Pinkney was exact even to syllables. He never hesitated for a moment; never miscalled even a name; never recalled a syllable. Few persons can read, with the same accuracy, with which the most beautiful and harmonious periods flowed from his lips.

Our youth should consider the vast and persevering labour he must have endured to achieve all this, even with his great natural capacity, and a memory the most rapid and tenacious I ever knew. Let them not abandon the prize because it is distant, or relent, or grow faint in the chase. The self-sustaining enthusiasm necessary to success in such an undertaking, is the offspring and the parent of many virtues, themselves worthy objects of ambition. Fame is not the only reward, nor, perhaps, to a moral imagination, the most seductive. Publick utility, the proud consciousness of being called to a destiny honorable to one's age and nation; and above all, the enviable felicity of being the patron of orphan and neglected genius, struggling against the conspiracy of opulent dunces, are remunerations which may well requite nights of wakefulness, and days of self-denial.

There is much in the history of Mr. Pinkney to animate the zeal of our young men. Born of obscure parents, at an early age he attracted the notice of several distinguished men of his native state, who, like Wythe, were patrons of genius, and he rapidly rose by the force of his abilities to a transcendent height of

power and distinction. His example, moreover, furnishes a consoling refutation of a calumny often alleged against the profession of which he was so distinguished an ornament, that it narrows the range of the mind. The rules of technical jurisprudence, far from enfeebling his fancy, were enlarged by his general knowledge and comprehensive views, into a noble and lofty system of ethicks. He had studied law, not merely as it is found in municipal codes, antiquated reporters, and the discords of litigious villages, but that law, whose seat is the bosom of God, whose voice is the harmony of the world. Instead of being a dull formalist, fit only for the practical questions of the *forum*, he was first in the senate as at the bar; the successful advocate of his clients, whether individuals or nations, before every tribunal. Nor should it be forgotten, that it is from the ranks of this much abused profession, that the great defenders of liberty have been drawn, in all ages. Demosthenes, who roused the Athenians to resist the tyranny of Philip, was an advocate. Cicero, so often the saviour of his country, was an advocate. When the despotick exactions of Charles the First were to be resisted, the lawyers stood foremost to breast the torrent. When the enormities of Great Britain threatened subjugation to the colonies, it was the voice of Henry, like the sound of the Paladin's horn, borne on Fontarrabian echoes, which waked the people of America to conquest and liberty. These are the benefactors of mankind, whom every dunce thinks it his privilege, and even his duty to abuse—but for whose political foresight and moral courage, there would have been no revolution, and

consequently no freedom in America; but for whose hardy enthusiasm, the galling badges of feudal tyranny,—the iron collars of Gurth and Wamba, would now be upon the necks of the English people. It is one of the worst symptoms of this sickly age, that there should be few indeed whose eyes can bear the effulgence of true greatness: blind to superiour excellence, or what is worse, unwilling to acknowledge it, we are curiously prying into the vanities and foibles of those who have gone before us. While the Reviewers are unhearing poor old Socrates for the gibbet, the scribblers of Great Britain are exposing to publick indignation the sins of Lord Bacon, with the line which Pope wrote for the sake of the rhyme, as their text. I am no apologist of the bribery of Lord Bacon; but I could never perceive the justice of the iniquitous discrimination, by which he has been set up, as “the meanest of mankind.” Pope might have found in more than one of his cotemporaries, now the idöls of Great Britain, examples of more detestable baseness, if possible, than even judicial corruption. It should be remembered, that the presents the Chancellor received, never induced him to enter an unrighteous decree. He neither sold, nor denied justice. But if he had done both, it is a vile morality, and a worse logick, to set-off the faults or even crimes of great men, against the good they have done in resisting tyranny, or exploding error. Our school boys will never learn any thing that is fit for a gentleman to know, so long as they content themselves with calling Demosthenes a venal orator, Cicero a cowardly statesman, Bacon a corrupt judge, Burke a bribed pensioner, instead

of studying their immortal works. The charge against Demosthenes is clearly refuted by collating the various passages of history. The cowardice of Cicero, will turn out, on a fair investigation of the facts, to be the same with that which filled the mind of Burke with awful apprehension, when the volcano of the French revolution threatened devastation to the world : except that Burke wrote at his ease by his own fire side, and Cicero amid the din of arms, in a tumultuous city, exposed to the worst violence, from the worst men. These moral criticks should learn, that foresight is not cowardice, neither are blindness and ignorance courage. The capacious mind of Cicero, embodied and combined all the causes which, through the vast extent of the Roman power, foreboded the ruin which finally overwhelmed his country, and the desolation which sat enthroned in his villas, on the eternal rock of the Capitol, and the palaces of the imperial Cæsars. To the prophetick mind of this truly great man, we may imagine a voice to have gone forth from the senate in which Cæsar bled, like that from the chamber of Duncan to the remorseful ear of Macbeth, crying, "sleep no more, to all the house," to all the city, to all the world. But Cicero did not abuse the long nights in which he watched over the expiring liberties of Rome, in plotting schemes of murder, or in consulting the auguries of Sibyls or of Weird sisters. He braved the swords of Cataline, and the daggers of Antony. His cowardice consisted in conceiving that Octavius, who betrayed and murdered him, young and untried as he was, might possibly be a less hardened villain than Antony, grown old in rapine and violence : he

was deceived, and suffered for his generous credulity, in trusting to the faith and honour of a beardless hypocrite and assassin. He who calls this cowardice, himself betrays something of the temper of one of the basest impostors, whose atrocities are recorded in history. But this is not the place to continue these reflections. I must leave the martyrdom of Socrates, and the posthumous persecutions of Bacon, to the execration of which they are worthy. Truth deserves all the praise which has ever been bestowed upon it; it does not, therefore, follow, as these criticks seem to suppose, that all fiction is vicious. One could scarcely perform a work more injurious to morality, than to prove beyond doubt, that Plutarch's heroes were cheats; that Aristides was a knave, and Epaminondas a juggler. If truth alone is to be tolerated, what would become of the sublime fictions of Homer, which have at once inspired courage and generosity in a thousand warriors? what of the yet wilder fancies of the poets, who, in celebrating the prowess and the enchantments of chivalry, have done more to soften the ferocity of man, than all the historians and criticks that ever existed?

To decry the fame of the dead, is to deprive the living of one of the strongest incitements to honourable exertion. It is the interest of society to multiply and strengthen the motives to virtue. Especially is it necessary in our country, to exalt the worth of posthumous fame, to purify our pursuits from some of their grossness. The professions are, with us, too often degraded and debased into merely mercenary arts. To begin with the first, where are our Bossuets, Borda-

age and so many qualities requisite as Mr. Warr. His person commanding; his countenance open; his voice clear and musical; his manner truly oratorical. Judgment holds a divided dominion over his faculties, so conspicuous that it is difficult to be content. His diction unites force and splendour more perfectly than ever I have heard, except Mr. Pinkney's original powers of action, but they unassisted by the contemplation of wit is prompt, pure, and brilliant; scintillations of fancy are lost in reasoning and declamation.

His premises are always broad and down, his deductions are faultless, of course, irresistible from the premises, resembles what he has observed of wit his first proposition and the conclusion. The march of his mind is all

loues, Massillons, Tillotsons, and Barrows? A cold, dry, barren fanaticism, is likely to supplant the mild and genuine piety of the pulpit. He whose affliction thirsts for the balmy dew of the gospel, must seek it in Sherlock and Taylor; and not in our modern sectarians. The gentlemen of the mortar and pestle are so jealous of the sanctity of their mysterious science, that I speak of them with great deference, lest in their abundant wisdom and kindness, they may treat me with a copious bleeding, and a blister on the head. Nevertheless, it is notorious, that learning in this department of human knowledge is made so easy, that they master the encyclopedia of medicine in a few months, without previous instruction in any science, and medicine strikes its roots into them all.

The lawyers, instead of doing any thing to improve jurisprudence, long the opprobrium of the vanity of the human mind, spend their lives in extracting for the occasion, precedents from the black lettered volumes of English law, compiled in the days of feudal tyranny and monkish superstition. Yes, we republicans of America, in the 19th century, are governed even in cases of life and death, by laws not only inaccessible to the people, but often absolutely unintelligible to the appointed expounders and interpreters of the system. Our advocates, far from aspiring to the logick and grace of Cicero, Murray, and Pinkney, are too frequently the "petty fomenters of village vexation," who know no other object of laws, than to produce fees to lawyers, a purpose which is answered all the better, by the obscurity and perplexity of the system. It is time the publick was disabused of the

chicanery of these several impostors, with all their trumpery : that instead of "Eremites and Friars, black, white and gray," we should have a body of learned, pious, and eloquent divines, whose lives approach in some reasonable degree, the great models on which they are supposed to be formed : whose doctrine should sweeten the bitterness of this earthly portion. Let them obey the command of their divine master ; "they go forth as sheep among wolves ; let them be wise as serpents, but harmless as doves." Physicians, too, should study with more diligent curiosity the operations of nature through all her works ; and learn from the mighty mother of sickness and of health, to mitigate and assuage the pain and misery of this mortal existence. Lawyers should unite, to simplify and ameliorate the social institutions, which, created for the purpose of preventing injustice, have become, in many cases, the very instrument for its perpetration. Even our farmers, instead of dull acquiescence in antiquated prejudices ; or visions of improvement and invention, chimerical as Mr. Symmes' central paradise, might introduce practical wisdom, and deep science, into their most useful and pleasing pursuit.

Let none of these worthy gentlemen misunderstand my freedom : it is the result of my respect for their professions, and my desire to see them all flourish. I am far from thinking contemptuously of any of them, even as they exist, in reference to the some class of men in other countries. Our clergy I believe to be more pious than the English, and our bar I am persuaded is full as able. The medical faculty, since the

whole science of medicine is reduced to a *few principles*, and the *materia medica* to calomel and opium, is nearly the same in all countries ; except, that in Europe, physicians have still the wisdom to know that they know nothing ; still the courage to be timid, and the energy to observe “a masterly inactivity” in their practice.

We shall have neither divines, nor lawyers, nor physicians, until a better system of general instruction prevail. We may boast as we will of the excellence of our natural talents ; but we can no more rival Europeans in any intellectual exertion without education and study, than we can see with our naked eyes, as far as they do with their telescopes. And the country is under greater obligation to Mr. Pinkney for nothing, than for having shewn the necessity of laborious reflection, and severe discipline, even in eloquence, which next to poesy, is supposed to be most entirely, the gift of the creator. He had the magnanimity to acknowledge his intense application. He was above the vulgar affectation of pretending, that genius can dispense with thinking, when its only use is to think, and be spared the trouble of seeking authorities for rules of conventional justice ; by spontaneous inspiration. He had the judgment to appreciate the two mighty ancients ; and possessed too much taste, to prefer any of our mouthing moderns, to the inextinguishable eloquence of the fiery Athenian, or the thundering Roman.

A

VINDICATION

OF

THE LAWS,

LIMITING THE RATE OF

INTEREST ON LOANS;

FROM THE OBJECTIONS

**OF JEREMY BENTHAM, AND THE EDINBURGH
REVIEWERS.**

Neminem oportet esse sapienterem legibus.



ADVERTISEMENT.

THE author of these reflections has no idea that the opinions he combats, will ever be adopted by a legislature of Virginia. Had he felt no other apprehension, he would not have disturbed the profound repose which the writings of the reformers have long enjoyed. He would have been content, that the indifference of the publick upon their speculations, should have been construed into inability to answer them, were they not calculated to weaken the authority of the laws, by giving to usurers the support of their sophistry. The author has not the vanity to hope, that he can change the opinions, and much less the practice, of any considerable number of money-lenders ; he will feel himself richly compensated for his labour, if any thing he has written, shall reclaim a single individual from the habitual violation of the law ; from the commission of a crime, generally ruinous to the borrower, often to the lender, and always injurious to the community. The great expounder of the common law has said, “to them that lend money my “caveat is; that neither directly, nor indirectly ; by “art or cunning invention, they take above *the legal* “rate ; for they that seek by slight to creep out of “these statutes, will deceive themselves, and repent “in the end.”



VINDICATION,

&c.

“ It is good also not to try experiments in states, except
“ the necessity be urgent, or the utility evident ; and well to
“ beware, that it be the reformation that draweth on the
“ change, and not the deaire of change that pretendeth the
“ reformation.”

BACON.

THE general adoption of analytick reasoning has produced a great change in the conduct of all our investigations. Its rapid and apparently logical development of results, offers striking facilities to those who are ambitious of demonstrating new problems, or of giving an air of novelty to established truths. But even in the stricter science of mathematicks, this magical evolution of properties by the introduction of a few condensed formules, is a fallacious guide to our conclusions. The alteration of a sign, the change of a letter, the slightest modification of any one of the theorems entering into the solution, falsifies the whole calculation. The error, too, lies so deep, that it is not the less dangerous because it is small: concealed and encumbered as it is by a series of remote deductions, to detect its precise place and quantity, often requires

more ability, than to compose the demonstration. Hence, in the hands of any but a consummate master of the science, one capable of testing the accuracy of his combinations in every link of their connexion, by the application of less delusive standards, this mode of reasoning is apt to lead to false theories, rather than to sound or useful conclusions. So long as philosophers confine themselves to deducing from their newly invented *formulae*, the laws of the physical world; we have no particular cause of apprehension; luckily for us, nature will not conform to their theories; and if they are out half a dozen degrees of a great circle in their calculation, the planetary system will continue its wonted motion. But when they depart from the severe sciences of geometry and physicks, to the variable qualities of human action, and human interests; and they, ramified and expanded into a boundless region of diversity and contrariety, insusceptible in their nature of being (like the properties of a triangle) reduced to a few simple equations; and pretend to claim the force of demonstration for their crude and superficial notions, they cease to be mathematicians of the school of Archimedes and Newton, and belong more properly to that class of them, who busied themselves in corrupting and deceiving the Roman State.* They may be curious speculators in abstract morality, but their pretended demonstrations should be as little respected in the business of human life, as navigators regard that singular curve, by which philosophers tell us, we

* Tacitus describes them well, *genus hominum potentibus indum, spei antibus fallax.*

may forever approach, and yet never reach the pole of the earth. Calculators may amuse themselves with such theorems, but seamen will rather trust to the safe guide of the latitude and longitude, the light of the fixed stars, and the needle, however it may traverse, than to the invisible lines, and recondite curves, by which schemers would bewilder them, in the wide and pathless ocean.

It is to be regretted that history begins to be considered a false chronicle of human transactions, of no more use in ethicks and politicks, than an almanack of the last year in advising us of future weather ; while the experimental sciences are esteemed mechanical and vulgar in physicks. Both are great hindrances to the career of speculation, and that circumstance alone is not the least of their recommendations. In the remarks I am about to offer, I shall not wholly disregard the experience of mankind ; nor argue, because political errors have existed long, that every thing established by ancient usage is therefore absurd. I continue to think, that some decent respect is due to the wisdom of past ages ; and am fearful, should we condemn all the generations of our predecessors as ignorant bigots, that posterity may reverse our judgment, and stigmatise us with the follies we impute to others, follies rendered the more ridiculous, by the presumption which begets them.

I do not admit Mr. Bentham's postulate, that, the law limiting the rate of interest being an exception to the general rule that contracts should be left to the will of the parties, he who defends the law, is therefore, bound to shew the reason for the exception.

When any principle has obtained the universal approbation of mankind, they who rely on its authority, are not required to prove it to be well founded; because this general adoption, and the fact that it is now acted upon, stand for reasons, until the contrary appears. So when any particular case has been uniformly excepted from the operation of a general rule, the exception has the same presumption to support it, with the rule itself. And no general principle can claim a longer, nor a more undivided approbation, than the exception which prescribes the limitation to the rate of interest. The exception is as old, and as constant, as the rule; and if it were the only exception, they who maintain that it is absurd, must prove their proposition. It is true as a general principle, that a man and woman of discreet age, chusing to become husband and wife, have a right to be married; but all enlightened nations having interdicted such connexion within certain degrees of consanguinity, it is not enough to put us on the proof that such prohibitions are wise, that a projector should start up, and say, it is an absurd violation of natural right, that one is not allowed to marry his mother or his sister.—Such a sentiment might be very natural in a Huron,* but it would want the grace of social refinement in the member of a civilized community.

It is one of the advantages of established, permanent, and fundamental laws, that their expediency is not to be a standing topick of debate, at the meeting of every legislature: that they are not to be tested by contrary experiments every ten years, like a cannon fired only

* See Voltaire's "Pupil of Nature."

to shew that it will not burst, and never to be used in the field : that they are not to be suspended, during half the life of every citizen, in order that each generation in succession, may be well assured, no body polittick can prosper without them. Were societies to exist in such perpetual vicissitude, the benefit of experience would be lost. The wise institutions of one generation would not be transmitted to another ; but each succeeding age of the human race, would be engaged in idle or pernicious experiments. A country governed after this manner, would present, rather an academy of Lagado to the eye of the satirist, than a society of rational creatures. Their philosophy would be fully as absurd, and infinitely more mischievous, than the schemes of the projectors of that learned institution, for calcining ice into gun powder, and rendering fire malleable.

We hear it perpetually quoted as a canon of political philosophy, that a frequent recurrence to fundamental principles, is necessary, to preserve the purity of our institutions. The maxim is old and true. But it seems never to have occurred to some of our statesmen, that a recurrence to fundamental principles is a different thing from their subversion. We are not required by this useful apothegm, to canvass our constitution and elementary laws every year ; and much less to repeal them. If this were the case, we should soon have no fundamental principles to which we could recur. We must frequently go back to the axioms of government, as the mason applies the plumb, to try whether the walls of the rising edifice decline from their original direction.

Mr. Bentham* and the Reviewer† tell us on the authority of Lord Coke, that to trace the source of an error is to refute it. This proposition forms an important part of their argument, and I shall give it nearly in their own words. They think it “extremely fortunate, that there is no difficulty in accounting for the origin of those prejudices in which the usury laws have their foundation. They are the offspring of religious bigotry. The practice of self denial came early to be substituted for active virtue ; and as the greater the temptation the greater the merit, much virtue was held to lie in refusing to one’s-self the means of making money, at all times the favourite pursuit of mankind. Besides, as the Jews dealt largely in this practice, the christians, ever-anxious to avoid their customs, deemed it peculiarly sinful. The authority of Aristotle, too, was a strong support of these views: the natural antipathy of the spend-thrift towards the saving man co-operated, but the most powerful consideration was the feeling excited against a rich man as the lender must always be compared with the borrower, and in favour of the poor one, by the very circumstance of the former making the latter pay for help, according to his necessities and reaping a profit without any labour or trouble of his own. It is true that many other classes are exactly in the same situation, as far as the circumstance of gaining by another’s working goes ; but in no case does the contest between distress and avarice so frequently become apparent.”

* Let. 10. p. 83.

† No. 54. p. 340.

This is the origin of the universal odium against usury, which is to demonstrate the absurdity of all laws restraining it. The religious bigotry of christian priests has excited an animosity, which is proved to have existed at the time of the composition of the book which foretold the coming of Christ :* nay when the synonyme for usury,† in the language in which this oldest of books, in the oldest of tongues was written, proves the existence of that odium, at the time that usury first had a name; and when Bentham tells us, that there never was a drama since the days of Thespis, in which a usurer was introduced, that he was not represented as a cruel extortioner. Then the anxiety of the christians to avoid the customs of the Jews contributed to this hatred. This is not a very good reason for the existence of the same prejudice among the Jews themselves; among the ancient Greeks, the Romans, and the Mahometans of this day. That which has existed every where, and in all times, cannot owe its origin to local or temporary causes; it must spring from the universal and unalterable constitution of things. It may be in this case, that the odium proceeds from pity for poverty and distress, bruised and crushed by a cruel avarice. Certain it is, that creditors have in all ages of the world, been the oppressors of their debtors. The history of Rome‡ is

* Deut xxiii v. 19, 20. Exod. xxii. v. 25. Levit. 36. 37.

† Dig. 50. ti. 16. l. 121. note 96. [Nam usuræ ab Hebræis *nesek* id est a morsu dicuntur.]

‡ Sane vetus urbi foenebre malum, et seditioinum discordiarumque creberrima causa: eoque cohibeatur antiquis quoque et minus corruptis moribus. Tac. ann. 6. c. 16.

filled with instances of their tyranny : it was a fruitful source of discord in the city, and of rebellion in the provinces. Is it because avarice is rapacious, and creditors are cruel, that we are to abandon their victims, to their own hapless fate ? This would be consonant neither to sound reason, nor to the practice of the wisest lawgivers. There are extant, two edicts of Justinian,* to the prefects of Thrace and Illyria, charg-

* I have nearly translated his words. *Venit enim ad nostras aures, quosdam in ea ipsa provincia quam tu administras, avare temporum necessitate captata, foeneratorios fecisse contractus, et paucam mensuram dantes, terrulas eorum abstraxisse, et ex hac causa quosdam colonorum fugæ latebras petiisse, alios fame esse necatos, et tristissimam pestem homines invasisse, incursione barbarica non minorem.* Nov. Com. 34. See also Nov. Com. 32 to the same effect and nearly in the same words.

Montesquieu quotes Cicero to prove, that interest in the provinces in his time, was at 48 *per cent.*, and adds, that it was increased by penalties. Cicero speaks only of his own province, and his letters shew, that this exorbitant limit, was imposed by law, to mitigate the customary extravagance of interest : and it is illogical to assign as the cause of the high rate, a law which was enacted, to limit previous enormity. What Cicero established in Cilicia, proves nothing as to other provinces, during the emperourship of Justinian. I use these edicts, as historical facts, to shew the temper and spirit of usurers ; in that view, it is no matter what the legal rate of interest was. I do not find that it was limited in these provinces, at the time the edicts were written ; certainly, it was not wholly forbidden, and that is enough for my purposes. If Montesquieu were right, in supposing the rate established by Cicero in Cilicia, was the same in all the provinces, what shall we say of these men, these *acerbissimi foeneratores*, who desolated their country, because they were restricted to 48 *per cent. per annum* in the loan of money ?

ing them by all the obligations of humanity, to mitigate the cruelty of usurious creditors; which in those provinces, without the exasperation of prohibitory laws, had scattered the husbandmen, or reduced them to famine, or overwhelmed them with diseases loathsome and depopulating, worse than the ravages of the barbarians who overrun the empire, and sacked the glory of the ancient world. When rapine and extortion like this, stalk abroad and threaten devastation to the face of nature; it is idle to tell us, that it is an imaginary evil, conjured up by bigoted priests.

A general objection to all such laws is, that states have no concern with the contracts of individuals. It is unquestionably "one of the finest problems in legislation, what the state ought to take upon itself to direct by the publick wisdom, and what it ought to leave with as little interference as possible, to individual discretion." I do not believe this problem can be reduced to any general rules, which will not be subject to too many exceptions, to be of any practical utility. It is not every silly bargain that ought to be rescinded; because fraud would then assume the guise of folly, and faith be banished from the earth. No one, however, denies the justice of the rule, that contracts made with idiots, and fools, should be void: as little can it be doubted that promises extorted under fear of death, or bodily hurt, are of no force. There are exceptions then, to the general principle, that contracts and engagements should be left to the arbitrary convention of the parties. The reason why courts of justice will not compel the execution of such contracts is, that in one case the party is incompetent from the weakness

of his understanding, to estimate fairly the advantages of his agreement; and in the other, the will is constrained by terrour, and consequently he lies under an equal incapacity. I put these only as instances of a very numerous class of cases; in which an enlightened spirit of equity, independent of positive statutes, holds the condition of the parties, to be in itself evidence of undue influence, and consequently of inequality in the contract; as there are others in which public policy requires a rescission of the agreement, A release of debts made by a gentleman to the mother and guardian of his wife just before his marriage; without surprise, or any species of concealment, and with the utmost deliberation :* a bond given by a young nobleman when twenty seven years of age to his travelling companion,† who imposed on him; marriage brocage bonds; bonds for the purchase of offices; composition with creditors; transactions between guardian and ward, parent and child, attorney and client, principal and agent, and with that improvident race of men, sailors, for wages and prize money, are a few of the many instances, in which English courts of justice, have constantly interfered for the protection of those who make contracts, under circumstances which disqualify them from treating on equal terms: or which public convenience demands should be declared void.

There is a class of politicians in our country formidable from their zeal and the popular tendency of their

* Duke of Hamilton v. Lord Mohun. 1 P. Wms. 120.

† Osmond v. Fitzroy. 2 P. Wms. 129, 1. Foub. 124. (k)
2. Vern. 346. 2. Atk. 34. 2. Ves. 516. 1. Wils. 229. 2. Ves.
281. 1. Foub. 124. (k)

doctrine, the perpetual burthen of whose song is, "hands off; let us alone." That this theme may be a salutary restraint on useless, or tyrannical legislation, is admitted on all sides; the difficulty will lie in its application. If the *ultra liberales* mean, that government is to pass no prohibitory laws; their extreme liberty becomes extreme slavery; as the severity of rigorous justice is, in law, the last degree of injustice. Their maxim *laissez faire*, is directed more particularly against those laws, which have for their object, the protection of the weak, or inconsiderate, or prodigal; and the amelioration of the moral condition of our species. Legislation has nothing to do with gaming, drunkenness, usury, and prodigality, say they; because men are better judges of their interest and happiness, than others can be for them: society should confine itself to protecting its members from injuries inflicted by others; and not attempt to correct evils, if they be such, which we voluntarily suffer.

The fallacy of the argument, consists in a misapplication of the doctrine *volenti non fit injuria*; a maxim of jurisprudence and morality, so generally true, that they take it without any qualification. Even it has its limitations. There are cases, in which its toleration would be ruinous to the whole interests of society. Suppose one in a moment of desperation for the loss of his wife, should in the first agonies of his grief, implore a friend to put an end to his existence. At what tribunal could the friend acquit himself of blame, for a compliance with such a request? Reason, morality, religion, and law, would all conspire, to convict him

of aggravated cruelty, in destroying a life, which he should have soothed and comforted in its affliction. Neither the victim of gaming, nor of drunkenness, nor usury, unfortunately for them, are blameless, as the disconsolate widower; but their infatuation dethrones the will and judgment as thoroughly, as sorrow, or any virtuous infirmity of the mind. The reason why the friend in this case could not claim the protection of the rule is, that a will disturbed by any violent affection out of the ordinary course of human transactions, requires its infirmities to be sustained by the law, to prevent others from taking advantage of it; "choice there is not, unless the thing we take, be so in our power, that we might have refused and left it;" and again, "the object of will is, *that good* which reason doth lead us to seek."* Now, wherever that sound and deliberating reason, which governs mankind in their transactions, and which alone makes them responsible agents, is seduced, or driven from its seat, by whatever motive or impulse, so it be without blame in itself, or with much less blame than is imputable to the seducer; it is no more than justice and charity in the law, to support and assist him, whose weakness or delusion exposes him to ruin from the fraud and knavery of others. There is not a free choice in such cases, the will is coerced by extraneous causes. This principle pervades the whole system of jurisprudence. In pity to human infirmity, to kill another on gross provocation, is not punished as murder, but manslaughter: if one's necessities induce him, or force him

* Hook. Eccl. Pol. B. I. § 7.

into contracts at ruinous interest, why should we deny him a similar indulgence, with that granted to all others, whose reason yields to natural impulses constantly tending to disturb it; impulses, too, proceeding from others, instigated by vicious and fraudulent motives? The advocates of unrestrained freedom say, because each individual can judge best for himself: that experience will cure him of his folly; and if it do not, he ought to suffer for it. But the whole system of legislation which I defend, is founded on the notorious fact, that experience will not cure such folly.

Courts have proceeded on this supposition, in those cases, in which they have anticipated statutes denouncing particular acts as intrinsically wrong in themselves: the unqualified offspring of fraud or oppression, which need not the reprobation of positive laws, to condemn them. In these cases, courts do not make laws, for that is not their province; they only apply principles of natural equity, which pre-exist in every honest mind, to invalidate contracts, having no support but the conventional forms which society has prescribed, for the more solemn authentication of fair transactions. In the sphere of natural justice, such conventions would be nugatory, because stamped with original iniquity; but when men associated together, and established legal forms to govern their intercourse, they did not abandon the substance of justice, which those forms were designed to maintain. Wisely, and justly, therefore, have courts of justice stigmatised as dishonourable, and scouted from the forum every contract, tainted with fraud, or oppression, or any species of moral turpitude. They who insist,

that all these should be left to individual compact; that the victim consents to his immolation; instead of constituting the publick will solemnly declared, the arbiter of our disputes; would make the whole political force of society, accessory to the perpetration of those very wrongs and violences, incident to the natural state; which it was the principal end of all human institutions to prevent. To enjoy a well regulated freedom we must give large preventive powers, to the lawful authorities of our country: but watch the rulers who exercise them with untiring vigilance. If they turn these powers into instruments for aggrandising themselves, depose them: but so long as they hunt vices mischievous to every one, (which are defended because most injurious to those who practise them) in whatever shape they appear, whether in the midnight revelry of the faro table, or the dim twilight and secret apartments of the usurer, they are publick benefactors, and shall have my praise.

The asserters of unqualified freedom admit, that the will of the borrower is seduced by causes which ought not to influence its choice, but think he deserves the punishment of the loss which ensues. Mankind have thought more charitably of human infirmities than they, is all that need be said. In this dilemma, we are offered only the alternatives, of holding out inducements to men to rescind contracts entered into under oppression, or of offering the same premium to those who seduce them, **by** confirming contracts made on their part, without the control of any such paramount influence. The sympathies of the world have very naturally been with the weaker party;

these innovators would invert all the charitable aims of a benevolent justice, and lend the power of the law, not to the oppressed, but the tyrant ; not to the lamb, but the wolf.*

That legislatures have a right to interdict any species of contract between citizens amenable to their laws ; and that the exercise of such power, is, from the nature of the case, referred to legislative discretion ; which discretion can never be improperly exercised when it promotes the general good, I had supposed were propositions which the most zealous asserters of the rights of man, could not at this day dispute. For if there be any thing in the whole range of human affairs, more exclusively within the province of legislative power, than all others, it is the subject of contracts. Whether they derive their moral obligation from natural law or human institution, their fulfilment can be coerced, only, through the authority of the states, and in the form and manner it shall prescribe. This point being left to the discretion of the state ; what contracts it will execute, is, of course, left to its discretion : else the authority of the state itself would be subverted by individual conventions, revenue could not be collected, fraud could not be repressed, force could not be disarmed, weakness could not be protected, and the whole political machinery would degenerate into an inefficient, and burthensome illusion. The legislature is the supreme guardian of the

* The relief given the borrower is expressly on the ground, that he is not *in pari delicto* with the usurious lender.

Lord Mansfield, 2 Dougl. 472.

national wealth ; the protector of the liberty, the property, the peace, the happiness and the morals of the people. To suppose there is any wrong to person or property which it cannot remedy, is to deprive it of its essential character ; and to assume that unlicensed usury is no evil, is to ask a concession of the matter in dispute. It would reduce the functions of this august body to a paltry, ministerial office, to confine its whole operation to prescribing the mode of protesting bills, and of collecting debts. The laws of a moral legislation impose duties paramount over all the rules of honour, so often quoted by those they can serve, and seldom heard of on other occasions. To allow those who pretend to act on principles of honour an exemption from municipal laws, would be to render those laws wholly inoperative. This code of honour, is founded entirely on publick opinion, and is of course subject to all the vicissitudes of its inconstant and corrupted tide. It is legislation which raises man to that dignity in which he can have laws of honour. . Take away the political guarantees which support the rights of property ; and human faith, and all the boasted laws of honour, will prostitute themselves into mere pretexts for violence and rapine. The rules of honour in subordination to civil regulations, crown the whole fabrick of the social edifice : they are the controlling principle of virtuous and liberal minds, operating always to repress the virulence of vindictive passions ; and mitigating the arrogance of power, raise the poorest creature in society to the level of the greatest, in social rights. Let us leave the law of honour to decide cases of honour ; let it continue to be the law of cour-

tesy, of the drawing room, of the field ; let it be the law of the heart, which ennobles generosity, and adorns courage ; but we must seek some surer protection for the poor and needy, against the destroying kindness of their benefactors the usurers. The legislature, then, have a right to make such laws, and so long as they exist, no one has a right to violate them.*

It is remarkable that the essay of Mr. Bentham, which the Reviewers inform us, “ offers a chain of political reasoning as close and as beautiful as any which the severest sciences presents, and which no one since the publication has ever been hardy enough to deny, had conclusively demonstrated the proposition which forms its subject,” has now been before the publick of Europe thirty three years, and, in all that time, this rigorous demonstration has not changed the policy of any one country ; nor, so far as I can learn, produced any considerable effect on the minds of any body of men, but the professed innovators who conduct the Edinburgh Review. How it has happened, that these nations have obstinately resisted the influence of this new light ; and that the bat-eyed philosophers of England and France have seen nothing the clearer for it, is not explained. We surely, then, have need to consider well what we do, before we repeal these statutes, which have existed so generally, and endured so long, on the mere authority of speculative reformers.

Mr. Bentham is known in America, principally by his defence of usury, and his offer to furnish us a code of laws of his own compilation. I am far from deem-

* See Appendix. (B.)

ing lightly of his labours or his liberality. I acknowledge with pleasure, the instruction I owe to his profound and original views : and what I shall now offer more in detail upon his argument, is submitted, with all the deference to his great abilities, which is consistent with candid discussion.

The first circumstance which excited my surprise on reading this luminous treatise was, that the proposition announced for analysis by Mr. Bentham, not only does not include in its terms the sole principle, on which the lawyers and statesmen of England (whence we derive our statute,) have vindicated the policy of its regulations ; but absolutely excludes it. He says, “ no man of ripe years and of sound mind, *acting freely,* and with his eyes open, ought to be hindered “ with a view to his advantage from making such bargain in the way of obtaining money as he thinks fit ; “ nor (what is a necessary consequence) any body “ hindered from supplying him upon any terms he “ thinks proper to accede to.”* It is impossible for us to determine, what precise meaning Mr. Bentham may attach to the words, “ *acting freely,*” apart from the other members of the sentence. If he mean acting without fear of violence ; an idiot or a child may do that ; yet their contracts are admitted to be of no force. If he mean acting with a knowledge of all the circumstances and consequences of his engagement ; a traveller who makes a promise to a highwayman who presents a pistol to his breast, may do that ; he knows he promises only to prevent being shot. And if he mean by *acting freely,* acting under no influence

* Let. 1. p. 6.

which can mislead his judgment, or disturb the principles of a rational choice; his argument is *petitio principii*, for the doctrine of the English law is, that a distressed borrower cannot weigh in an untroubled balance, the advantages and evils of his bargain.

Mr. Bentham admits in the next page* that there are contracts, which are properly withdrawn from individual agreement, and regulated by principles of publick convenience. He does not inquire what these contracts are, nor what are the reasons which render it proper that they should be wrested from the hands of individuals, and placed under legislative control. After having omitted in announcing the question, to include the only principle on which the English lawyers have ever defended their statute, he reduces the reasons given in support of it to four; which he endeavours to shew, are insufficient; and comes at last to the conclusion, that there is no better reason for limiting the rate of interest, than for regulating other private contracts: a strange conclusion indeed, for one who admits there are contracts which ought to be thus regulated. Here Mr. Bentham has all the advantage which his analytick logick can give him. He resolves the concrete subject *usury*, into these four elements, and manages them as he pleases. But they who defend the laws against usury, must be allowed to give their own reasons for them. Mr. Bentham, however, having assigned his, it may not be amiss to see how the analysis is conducted by the analyst himself.

* Page 7.

The first reason examined by Mr. Bentham, is “the prevention of usury :”* which he supposes to be urged by the advocates of the law. The refutation is ; but for the law limiting the rate of interest there could be no such thing as usury ; since money no more than other commodities, has a fixed and invariable price. The argument, therefore, is, that men should be allowed to take what they can get for their money, because if it was not prohibited by law, they would. That is undeniable, else the law would be superfluous. But whether it be well to prevent taking excessive interest, is a question not at all connected with the assumption, that if the law fixed no rate, none could be deemed usurious ; since it is certain, that there may be actual excess in the price of any thing. Mr. Bentham may make the profit of loans as great as he please to the borrower ; still he cannot deny, that there is a limit to them as to every finite quantity ; and the interest which may be given for money if arbitrary, is unlimited. The unlimited rate which may be given, then, may exceed the limited profit made by the borrower ; and, consequently, there is in the nature of the transaction, a point, at which the rate of interest may become excessive. That is, there is a point, at which the loan becomes an injury to the borrower. The law prescribes as a general rule what that point is. If by usury, therefore, he meant an excessive rate of interest ; or an interest beyond any profit which can be made by the loan ; it has an existence in nature, independent of human legislation. But when men’s folly, or necessi-

* Lct. II. p. 9.

ties, or sanguine calculations, betray them into loans at ruinous interest, the mischief is the same, by whatever name we call it. The defenders of usury may say, that the same reasoning applies to every other bargain. I shall presently shew that it does not apply to every bargain; because there are only a few cases besides, in which the will is coerced by extrinsick causes. To all such cases the reason applies, and the law ought to be extended to them; and so it is.

Mr. Bentham asks "why the legislator should wish "to prevent the owner of money from getting more "for its use, rather than less? why it should not be "penal to offer less than the legal rate, as well as to "take more? Let any one that can, find an answer "to these questions, it is more than I can do."* The law cases of his own country would have resolved these difficulties, which perplexed him so much.†

* P. 15.

† "The statute of usury was made to protect men who act with their eyes open; to protect them against themselves, upon this principle it makes it penal for a man to take more than the fixed rate of interest, *it being well known that a borrower in distress would agree to any terms.*"

Lord Mansfield in *Lowe v. Waller* 2. Doug. 738.

"The reporter not seeing this distinction has given the absurd reason that *violenti non fit injuria*; and therefore the man who from mere necessity, pays more than the other can in justice demand, and who is called in some books the *slave of the lender*, shall be said to pay it willingly, and have no right to recover it back, and the lender shall retain; though it is in order to prevent this oppression, and advantage taken of the necessity of others, that the law has made

The law supposes the borrower to contract for the loan, under the pressure of necessity; and to be an unfit judge of the advantages of his bargain: a condition in which the lender does not stand, unless it be the same thing to have money to lend, and to have none and be obliged to borrow; which will hardly be pretended. Why one should be punished for offering to borrow at less than the legal rate, when no one is punished for asking any premium he please: is more than I can comprehend. The mischief to be remedied is actual extortion, not offers to extort; the law punishes acts, not proffers to act. It is curious, that this idea of the necessity under which the borrower labours, seems never to have occurred to Bentham or the Reviewers, in the only light in which it affects the question.

The second reason assigned for these laws is, "the prevention of prodigality."* Throughout this part of

* Let. III. p. 17.

it penal for him to take. This kind of reasoning is equally applicable to the case of a bailiff, who takes garnish money from his prisoner."

Ld. Mansfield, in *Smith v. Bromley*, 2 Dougl. 696. 2 T. Rep. 763. 3 T. Rep. 17. 2 Bl. Rep. 1073. 1 H. Bl. 65. Cowp. 197. 8 East 378.

There has been given in our own court of appeals, a very strong, and clear, exposition of the true policy of the Statute; putting it on the ground of coercion on the borrower, and shewing, that in comparison with the usurious lender, he is an innocent party.

See Judge Roane's opinion in *Austin's adm. v. Winston's ex'r.* 1 H. and M. 46.

the investigation, the prodigal is treated as one, on whom considerations of prudence cannot have the least effect ; as one who is destined to waste his fortune, and it is therefore idle, "to stop at the faucet, what will run out at the bung hole." Such a person I admit, should, as he suggests, be put under an *interdict*, as by the Roman and continental laws, that his estate might be managed by more discreet people. Besides these incurable prodigals who are not worth the saving ; there are in England and in our country, many young men prone to extravagance, who neither have ready money, nor chuse to sell their estates, nor to support the splendid figure to which they aspire, by purchasing goods at an overvalue. Money is essential to parade, and money they will have. Should they mortgage their estates to pay loans contracted at 5 *per cent.* a month ; and when they become a little sobered from the unprofitable love of horses, dogs, and show ; insist that they have been heedless blockheads for borrowing money at a rate which could not have been saved by any species of investment, and claim the benefit of the usury law ; the only inquiries which Mr. Bentham would have us make are, whether they were of ripe years, sound mind, and had their eyes open. Abolish the law, and we are told experience will reform them : their own experience may, but we know that the experience of others has no effect upon youth ; and it is precisely to supply the place of experience, that the law is necessary to them.

The third reason examined is, "the protection of indigence."* Here I expected to find the real founda-

* Let. IV. p. 31.

which have not been discussed by either of their great opposers.

It is admitted by Bentham, that there are cases in which individual contracts must be controlled by law. I will state a few of them, with the reasons for the exception; and shall maintain, that these reasons do not apply with more force (if with so much) to any one case, than to that of the loan of money. If the reasoning shall be admitted sufficient to sustain the law in a single case, and I shew it to apply with equal force in that of the loan of money, I do every thing which can be required in such a controversy, even the supposition, that I am under the necessity of taking the proof upon me.

Tolls of turnpikes are regulated by law; and if they were not, the extortion practised upon travellers would be enormous. Suppose a man has a pressing necessity to pass from one city to another: there is but one direct way, and that leading through a turnpike gate. The toll gatherer, if not restrained by law, would not calculate by the present market rate of interest, what would yield him a fair profit on his labour and capital, but would measure his demand by the necessity of the traveller. It is vain to say, that if the toll be excessive, other turnpikes will be opened. The traveller cannot wait until a new road is cut; and if he could, the owner of the old and new roads, may run the race of a vindictive competition for a while; but when they have discharged the acrimony of their gall, they will find underbidding a losing game, when they may unite stocks and double their profits. The upshot of the new turnpike will be, that both will be

badly kept, and there will be two extortioners instead of one. After the lapse of a few years, there may be a compromise between the owners, by which one of them is to receive a certain remuneration for stopping up his altogether. Then there is a clear loss to the community of so much ground, labour, and capital, as were employed in opening this new road no better than the first, and in the end certain to make it worse. For these reasons, the law wisely makes the contract for the company in anticipation. They know what their toll is to be ; the traveller knows it when he enters on the road, and no one can complain of injustice.

Similar considerations, have induced legislatures, to limit the tolls of canals, ferries, bridges, &c. If there were no law limiting the rate of ferriage (e. g.,) the consequence would be, that at the ferries where few persons pass, the boat would half the time be out of order, the boatmen absent, and the occasional travellers stopt by high water, would be made to pay the whole expenses of the year, and a profit by way of premium, to the owners negligence and laziness.

But we are told, bridges, ferries, roads, canals, &c. are erected under the authority of the legislature, and therefore the state may prescribe the toll. They are, to be sure, erected under the authority of the state, because the state has said, they shall not be erected without its authority. But it is undeniably the natural right of every one, to make roads, bridges, &c., over his own land and water ; there can be no natural right in property more perfect. If the legislature have a right to regulate the toll of a bridge, then, why have they not the same right to regulate the interest of mo-

ney? If the mere fact of limiting the toll of a bridge by law, make a bridge derive the legitimacy of its origin, with all its incidents, from the will of the legislature; why does not the fact of limiting the rate of interest, make the contract of loan, equally a creature of the legislature?

Will it be said, that the law authorising the establishment of bridges, ferries, &c., gives a species of monopoly to the owner; and rightfully limits the toll, because it has made competition impossible? To concede this, would not affect the right of the legislature to limit the rate of interest; but this supposed monopoly granted by the legislature, is not the reason why legislatures have the right to limit the rate of tolls; for in some cases where the power is admitted, there is not even a pretence of such a monopoly, and in others, it is nothing but a pretence. It is not every place that is by nature fit for a mill, a bridge, or a ferry: a ferry or a bridge where there was no road, nor any occasion to pass, would be useless; and wherever roads pass deep rivers, a right to establish bridges, or ferries, is an incident to the ownership of the soil. The legislature, therefore, creates no monopoly of such advantages; nature herself has done it, by limiting the number of places affording them. And supposing legislatures to aid this monopoly inherent in the nature of things, by interdicting ferries, &c., where they might exist; is giving to the legislature a greater power than I assert; for authority to forbid, is paramount over the power to regulate. Nature has established a monopoly of the same kind in money. It is not every one who has money to lend,

else there would be none to borrow. It results from the nature of money, and the different natures of men, that it should be very unequally possessed. There are a hundred, perhaps a thousand borrowers for one lender ; nor can this monopoly be destroyed by legislation : men differ essentially, and unalterably, in their capacities, their industry, their frugality and their avarice ; money, too, is already accumulated in the hands of a few. These differences will for ever prevent its diffusion in equal portions : and so long as the inequality exists, there must be an affluent, and a necessitous class of people. The first will have power enough over the second, without the co-operation of laws licensing usury, and inculcating extortion.

The usury laws, may be called a tax upon industry and economy. They are a tax of the same kind which it is upon talent and enterprise, to punish usurpation : injuries to society are not to be tolerated, because they spring from qualities usually allied to virtue. We may be told, there is a similar monopoly of all other property ; one man has more slaves, horses, and land than another ; yet we do not limit the price at which he may sell them. But what necessity can compel one, in defiance of the conviction of his own judgment, to buy negroes, horses, or land, at twice their value ? Neither one nor the other can satisfy our wants, without being turned into money ; and if that be intended by the parties, and illegal interest be reserved, the bargain is usurious and unlawful. Besides, whatever Mr. Bentham may say of there being no fixed price for money ; it is certain, that money is not subject to near the same fluctuations in value with

other property : all our other possessions being estimated in money, are subject to every vicissitude of value incident to it, independent of those causes inherent in the nature of such possessions which alter their market price. Finally, if we cannot prevent extortion and ruin in other cases, shall we, therefore, tolerate them in the loan of money ? Or will Mr. Bentham's disciples have it, that the right of the legislature to limit the toll of a bridge, results from the penalty imposed on the owner for not keeping it in good order : which is to justify one condition imposed by the legislature, by another condition imposed by the same body. No, it is the publick necessity which requires that tolls of ferries, &c., should be fixed by law, and that penalties should be inflicted for exceeding them. It is the law which secures to every individual, the enjoyment of his property : without its protecting sanction, the traveller would not ask permission of the owner to pass his bridge, or ferry ; and consequently, neither bridge nor ferry would ever exist. It is just that the proprietor should submit to the wise control of the legislature, a property which without its protection, he could not enjoy. Nor is it enough, that we should be told the passenger in these cases has no alternative, and is therefore in the power of the owner. He has the alternative of fording, or swimming, or at the worst of not passing at all. The theory of the law is, that the borrower of money, too, is in the power of the lender, and requires the same protection.

Strong cases of the interference of law with individual contracts, have been exhibited in Philadelphia,* and New-York ; in the prosecutions of journeymen cordwainers, for a conspiracy to raise their wages. Such proceedings have been had in England,† ever since it had extended manufactures : indeed, there could be no security for the successful prosecution of any trade requiring a number of persons of a certain degree of proficiency, without them. Apprentices would learn just enough of their business to be necessary to their instructors, and then combine to extort wages, beyond what they could earn by any individual enterprise, or what their employers could afford to allow them. The law, therefore, has declared directly, that journeymen shall not confederate to demand unusual wages. It may be answered, that the law punishes only confederacies to raise wages, and not individual demands of higher wages ; I will not stop to examine this objection, since men have a natural right voluntarily to combine to do that collectively, which each is admitted to have a right to do separately. The restraint on journeymen, however grievous, must be borne, in great manufacturing towns ; without it, no great manufactories could exist, and society would consequently be deprived of

* See the trial of the Boot and Shoe makers of Philadelphia, for a conspiracy to raise their wages. (By Thomas Lloyd, 1806.) I regret that I have not been able to procure the report of the New-York trial, in which I understand, Mr. Emmet exhibited the full powers of his capacious mind, in maintaining the policy and necessity of the law.

† The Stat. 2 and 3., Ed. VI., c., 15 punished conspiracies among victualers and artificers ; and 11. H. 7., c. 22, regula-

many useful and necessary fabricks. The journey-men cannot complain of the provision, because they assent to it, in becoming mechanicks ; and journey-men one day become employers ; and having paid the price of learning their trade, they now enjoy its advantages. If a few poor cordwainers are forbidden to combine to demand certain wages for the sweat of their brows ; why should the bantlings of fortune, selected not in blindness, but with vicious discrimination, be allowed to prey upon the sufferings or infirmities of mankind, without mercy, and without measure ? They who reluctantly dole out the excess of their revenue ; and that for a fair, often for a large profit, are rapacious indeed, if they think it oppression, that bounds should be set to the profit they are allowed to derive, from the superfluity of their wealth.

Without insisting on the case of lotteries, which are subject to legislative provision ; of gaming bonds, which are void ; and others of the like nature, I will mention two other cases in which the analogy to the present is still stronger.

Tolls for grinding grain are fixed in Virginia by law.* There can be no question that a right to erect mills, is as perfect a right in the owner of the soil, and water,

ted the wages of many labourers. Probably it was the abuse of this power in England which created the prejudice against it, even where it is wisely exercised.

* The statute of England, made in the reign of Hen. 3 or Edw. 1 or 2, (for it is not known which) ch. iv. gives millers the twentieth or twenty-fourth corn, according to the strength of the stream ; and inflicts *grievous punishment* for exceeding the lawful rate.

as that of planting corn ; and one has as clear a natural right, to demand what he can get for grinding at such mill, as for the corn grown upon his land. To say, therefore, that no one shall take more than one eighth for grinding his neighbour's corn into meal, nor more than one sixteenth for grinding it into hominy, is to control by law the contract of the parties ; and to deprive the miller of a natural right, in the same manner as in the case of limiting the rate of interest. The rate of tolls at mills, too, would fluctuate as much as the price of any article whatever. It would depend on the abundance or scarcity of corn ; on the number of mills ; the constancy of streams, &c. In the valley of Virginia where mills are in greater number, and streams more constant, the actual rate of tolls is generally below the statutory rate : while on this side the mountains, where streams are less constant, where indeed the greater number of mills are stopt during some period of every dry summer, the difficulty of procuring meal is such, that there is scarcely any toll which might not be exacted. But for the restriction of the statute, the oppression on the poor would be grievous. There is nothing unjust in the law, unless we call it injustice, to deprive the owners of the few mills which never stop, of the advantage of making these oppressive exactions, in years of drought. They cannot complain of this, for it is matter of choice with them to erect mills subject to the regulation of law. Without law they could not enjoy the right of proprietors. They must take society as they find it ; they cannot separate its benefits from its restraints ; it is not right that they should ; for then, all the advanta-

ges of society would belong to one class, and all its evils fall on another ; which would constantly tend to the destruction of the social fabrick, and expose each individual to the rapacity of all the others.*

* If it be answered to this case, that the miller is compelled to grind for his customers ; and, therefore, to make the illustration applicable, money lenders should be compelled to lend to borrowers ; I say, 1st, that in England, they are not so compelled, by any statute that I know—they are by common law, as inn-keepers, &c ; 2d, bakers, &c. are not compelled to sell their bread ; 3d, it is still farther controlling the individual contract, for it in fact, coerces, not only the performance, but the undertaking. And, lastly—there is no necessity for this principle, to support the analogy, because the miller takes all he is ever entitled to, at the moment of discharging the obligation the law imposes on him ; so, he can never lose. But, if one be obliged by law, to lend money, he may lose principal and interest ; or, if the law allow interest in advance, he may lose the principal. Such a rule would be absurd, because it would prescribe for the lender, what he should consider sufficient security, as well as what is a suitable rate ; whereas the law, as it now stands, fixes only the rate, and by leaving the security to the lender, makes it his fault if he ever take insufficient indemnity. One is tyranny, the other wisdom.

In the loan of money, the lender parts with the possession of his whole interest ; in grinding corn, the owner of the mill gives the use for a few minutes, to a customer. To make this objection avail any thing, the law should compel the miller to sell his property, or, at least, to rent it for a given time, at a given price, but it does neither.

For mills, see 15 Viner. 398.

The* assize of bread is the last instance of publick interference with private contracts which I shall mention. This custom of limiting by a publick ordinance the price of bread, prevails only in towns. Where families bake their own bread as in the country, it can have no propriety. In towns it is found highly convenient, that domestick labour should be divided ; that each individual may be less interrupted in his trade ; families are therefore supplied with bread by bakers. Then, I say, to regulate by law the price of bread, becomes as legitimate and even necessary an exercise of legislative power, as any which is used. Suppose a town whose population is 10,000 to be supplied with bread by ten bakers ; the argument on the other side is, that these ten bakers are all interested to bake bread on the most reasonable terms ; and that competition will prevent exaction by any one of them ; and therefore a law limiting the price of bread, is not merely superfluous, but mischievous. It is true that no *one* of these bakers can extort excessive rates, for when he raises the price of his bread, the consumer will go to another baker. But suppose *they all* confederate ; and agree to raise the price of bread at once : what is the consumer then to do ? Is he to wait until he can build an oven, buy flour, make yest, and learn the trade of a baker, before he can eat his break-

* The statute of 51. Hen. 3, fixed the assize of bread and ale in England. An act passed 8. Ann. c. 18. §1, giving power to the Lord Mayor of London, and to the mayor and aldermen in other towns to regulate the price of bread. Geo: II. 29, continued this act.

fast ; and that to the utter destruction of his trade ? They who talk of the miracles of competition, forget that there is such a principle as combination.—Which of these contrary tendencies will predominate, must depend, not upon any moral principles, which they who renounce moral legislation suppose are to govern the world, but upon the ratio of the supply and demand for the article, and the number and disposition of those who supply it. Wherever there is a demand for an article beyond, or even up to, the supply ; they who sell the article, have the consumer in their power, if the article be one of first necessity ; and if they only can speedily supply the demand. There, combination, and consequent extortion, are certain. We surely need no illustration of the truth of this : we need only look at the mechanicks about us to verify what I say. There are many more boot and shoe makers, than there are bakers, and combination is proportionably more difficult ; yet do they sell their manufactures 50, and a hundred *per cent.* dearer, than we could import them ; and 15 or 20 *per cent.* above the fair profit. What is this but combination ? Where is the principle of competition ? They are just now beginning to take the war taxes off the price of their work. We could, then, have no security, that these ten bakers would not combine to make their customers pay 5, 10 or 20 *per cent.* more for their bread, than they ought. They could not do it always, because other bakers, not in the confederacy, would supplant them. It is to prevent this evil, tem-

porary to be sure, but of frequent occurrence, that cities enact ordinances regulating the price of bread. Similar regulations as to other commodities exist throughout the world. The price of wood, I understand, is limited in Paris, where the winters are severe, and the supply of fuel scant. The early colonists of Virginia found it necessary to restrict the price of corn.* The assize of bread to be fair, should allow a reasonable profit ; it becomes unjust only by its inadequacy, as fixing the rate of interest does ; but less unjust, than fixing the assize of bread too low ; for the baker acquires his profession by time, and performs his duty with labour.

It has been treated as a political paradox, that the price of bread should be limited, and that of grain not. Both provisions are consistent and rational. Bread is emphatically the staff of life ; and though grain makes bread, it is not bread, any more than bullion is money ; and we may buy bullion at more than 6 *per cent.* without committing usury. The true reason for leaving the price of grain unlimited, was well known to our early law givers at James-town ; the high price of grain operates as a bounty on its growth. The increased fertility of the soil, the superiour industry of the farmer, stimulated by the high price, will lower it

* In the first laws of the colony which are preserved, it is enacted, " For the encouragement of men to plant store of corn, the price shall not be stinted, but it shall be free for every man to sell it as dear as he can." Ord. 14, laws 1623. Both the enactment and the repeal of the restriction were wise ; circumstances had changed.

more effectually by increasing the supply, than positive enactments could by limiting the price. The produce of grain is susceptible of astonishing increase; while the produce of bread, from a given quantity of grain, is fixed. Allowing any price, therefore, to be taken for bread, could never operate as a bounty on the growth of grain. The high price of grain is an encouragement to the farmer to raise more grain, because the price is general; but whatever a few bakers may demand during a week, for ill baked flour, can never encourage the farmer to make more, but will only induce people to bake their own bread. These old opinions are not so ridiculous as innovators imagine.— They will not take the trouble to find their justification.

The reasons for controlling these contracts by law, are not the same in all cases. In lotteries, the necessity of interfering, results from that general infirmity of human nature, by which each person overrates very much his good fortune; a quality with which we are indued for wise purposes no doubt, and one which sustains us in our heaviest afflictions: but it is perpetually urging us to risk a little, where there is a possibility of obtaining a great deal, however remote that possibility may be.—There is no publick infatuation more ruinous, than the passion for lotteries would be, if uncontrolled by law.

Gaming contracts are made void partly for the same reason; and for the additional one, that the practice of gaming supports a number of swindlers and vagabonds, who corrupt and ruin the youth of a country.

The release of the Duke of Hamilton to lady Gerard, though executed without surprise, or conceal-

ment, was annulled by Lord Cowper, because, one on the point of marriage is in no humour to appreciate fairly, any condition or alternative which might defeat his marriage : he negotiates with the parent or guardian of the lady, under the influence of feelings amounting to constraint and duress ; nor can I perceive that the scheme of the Reviewers for leaving all contracts to the consent of the parties, will disenchant us from the spells of these Syrens, any more than it will from the sorceries of the less lovely magicians of the faro and the usury table.

The tolls of turnpikes, ferries, &c. are regulated by law ; because emergencies arise, in which the inducement to pass is such, that any price might be exacted. —It is not what the passenger can afford to give, which should measure the toll, but what the keeper on a fair estimate of the labour and capital expended, in reference to other employments of each, can afford to take. One by being in New-York to make a particular purchase by a given time, may if you choose make \$100,000 ; to be there then by the requisite time, will be worth to him an immense sum, perhaps more than \$50,000 ; no extravagance of extortion in tolls, could ever amount to this, but in loans of money it may ; and one who thinks he sees clearly such a chance of gain, will hardly hesitate to give any rate of interest.

More than a certain rate of tolls in mills, is forbidden under penalties ; because meal in Virginia is an article of the first necessity, and the power of preparing it by mills is confined to a few. In dry seasons that number is so diminished, that all the corn for 10 or 12 miles round, will be ground at one mill. The number of the consumers, and the absolute necessity of the ar-

ticle, would enable the miller to take one half for grinding the other ; or for grinding out of turn, the corn of a particular person ; the law, therefore, prescribes not only the toll to be received, but the order in which the customers are to be served.

The reason for the assize of bread, has already been assigned.

Now I maintain, not only that as strong reasons exist for limiting the rate of interest, as for interfering in any one of these contracts ; but that all the reasons in each separate case enumerated, actually concur, and with increased force, in the loan of money. Various as have been the expedients adopted by mankind, to supply that necessary article we call money ; some qualities have been common to them all, which remarkably distinguish it from every other commodity. The hungry man relieves his suffering, and the naked is clothed, not to be sure with money, but with what it always commands.—The voluptuary gratifies his appetites, and the needy his wants, with this object of universal, and insatiable desire. All our contracts terminate in money ; if we buy, it pays our debts ; if we borrow, it redeems our faith ; and even if we beg, it is for money. He whose family is stinted by famine, or pinched by cold, or depressed by sickness, relieves their wants, or mitigates their pain, with money. He who owes an unfeeling creditor, and is ashamed of his dependence, or dreads his power ; borrows of one who he hopes may be more kind. He who is in custody of the bailiff, and he who is in jail, are liberated by money. The unexperienced youth, the man ostentatious of parade, the sanguine projector, the cautious

calculator, are all willing to promise payment at a future day, for smaller sums in hand. The vain search after the Philosopher's stone was the *approbrium* of the wise men of one age; then came the South sea scheme, the Mississippi scheme,* and in our own time we have had, what was as idle as either, the town lot scheme. We have seen not the young, nor the old, nor the middle aged only, but every class and denomination of men, infatuated with new prospects of wealth, and distinction; and borrowing money at high interest, to realise visions, preposterous and chimerical as any recorded in the Arabian Nights. There is nothing, then, which we make so many sacrifices to obtain, nothing in which we more deceive ourselves, than in our calculations of the advantage to be derived from the possession of money. The hunger of the famishing husbandman, who bears his sack of corn to a distant mill, is less sharp and pinching, than the misery of one about to be removed from his family and fire side, to the cold and inhospitable floor of a county gaol. If the necessities of one be an unfit subject for speculation, why not those of the other? The borrower of money, whether he be the victim of a cruel necessity, or the dupe of a deplorable infatuation, does not calculate by Cocker's arithmetick, his chance of loss or gain; he

* It has ever been a great problem with mankind, to grow rich, without working: an effort, absurd and impracticable, as the perpetual motion. God ordained that we should eat our bread in the sweat of our face; any conspiracy to get possession of the wealth of others, without an equivalent, is but another species of robbery; one perpetrated by fraud, instead of violence.

does not consult his judgment, but yields to an impulse of his own nature, which all the rigours of Mr. Bentham's system will never repress. They know little of the human character who insist, that the very losses he suffers will cure him of his folly : experience demonstrates the contrary ; we must legislate on the principles and propensities of man which we know to subsist ; it is madness and presumption to pretend to alter those principles. Shall we then say to the ferryman, you shall have half a dollar and not fifty dollars, for ferriage ; to the miller, you shall have one eighth, and not a half, for grinding corn ; to the baker, you shall have but 6 cents for a loaf of bread, which to a starving man is worth thousands ; to the master of a ship, you have purchased these wages or prize money of sailors, too thoughtless to take care of themselves ; to a Peeress, you have imposed hard conditions on this young Lord in the hour of his marriage, when desire overcame his judgment ; and yet in a year of biting scarcity, suffer the poor tiller of an ungrateful soil, who trusted to clouds that yield no rain, to be taken to gaol, for money borrowed at one and a half *per cent.* a month ? Shall an English Chancellor be more just to a young nobleman, than a Virginia Legislature will be to the poor, whom it is its duty to protect, from the insults of the proud, and the spoliations of the rapacious ? There are disappointments incident to our fallible judgment, and above all human foresight or control. The wisest men deceive themselves from sanguine calculations of future gain. Could Antonio have anticipated the loss of his rich argosies, he would not have signed the bond to Shylock. " There

be land rats, and water rats." There never was a human being, who was not willing to escape a present evil, at the risk of a greater in future ; there are few who will even consider the rate they can fairly afford to pay, for this contingent advantage. If there be a case imaginable, then, in which the inequality of the contracting parties amounts to oppression, the loan of money at enormous interest is one. Every reason which sanctions the interference of law in other cases, applies more strongly to this. He who has corn to be ground, may if he please beat it into meal ; or he may use potatoes, or beans, or some of the numerous substitutes for it. He who is detained at a bridge or ferry, may ford, or swim, or at the worst remain upon dry land without fear of drowning ; but nothing will satisfy a remorseless creditor but money ; nay he may harass and persecute his debtor, for the purpose of extorting from his necessities a higher premium ; he may put him in jail, and the starling may cry until doomsday " I ca'nt get out," but the jailor dare not liberate him.—Whatever be the principle which pervades the other cases, therefore, whether it be necessity, or vanity, credulity, or enterprise ; they all conspire with accumulated and concentrated strength, to require the regulation by law of the interest of money, and the reasoning equally applies to the loan of other commodities, else they would become the disguise of loans of money.

It is an argument which has been long used against the usury laws, and one which has great influence on the opinions of those who oppose their policy, that they tend to increase the premium for loans ; because

the lender must be insured by the rate of interest, against the risk of the statute's being pleaded. This argument, it will be observed, pre-supposes the borrower to be in the usurer's power, and admits what I have before endeavoured to prove. It further supposes, that the borrower does not choose to avail himself of the law; otherwise it is no matter what the premium may be; and if one ask no protection of the law, he waves his right; which has no application to the case of another, insisting on his right. It would, indeed, be an injury to those who did not mean to plead the statute, if it had the effect of raising the interest of money. A severe law irregularly executed might have such a tendency; as, perhaps, is the case in Mahometan countries. Our law, I am sure, either produces no such consequences, or, if it do, that mischief may be much better remedied, than by a destruction of the whole system. I never heard that the penalty for taking illegal tolls at mills, raised the rate. Just the same argument might have been used, against all the statutes we have, proscribing and punishing gaming. It might have been said, that the penalties against gaming will only induce people to bet higher, to be indemnified, by their winnings, from the perils they encounter by violating the law. Yet in this instance, at least, Virginia furnishes a striking example of the triumph of a wise legislation, over a pernicious and popular vice. The truth is, when avarice and extortion begin their course, they despise the principles of vulgar calculation; the "good old rule sufficeth them; that they shall take who have the power, and "they shall keep who can." They will take all they

can get, be assured. Even in Virginia, where the risk until recently was merely nominal, (for the plea was nearly unknown to our courts) a local and partial system of extortion has been practised, little inferior to the barbarous rapine of Turkey, or the havock of the Roman provinces. If unlicensed usury be a grievous oppression upon the community, it is a weak objection to laws restraining it, that they who violate them, will demand a premium for the evasion. We had as well resolve, that smuggling should not be interdicted, because it will raise the price of smuggled goods. If there be any thing in the objection, it is easily obviated, by increasing the penalty in a greater ratio, than the interest to be received. Then if usurers calculate the hazards of the law, they will find, the more they are to obtain for interest, the more certain are they to lose.

Scarcely subordinate to this consideration, is the argument, that all the laws restraining usury are nugatory and inoperative. The ground for this assertion is, that usury is practised in every country in defiance of law.—True, and murder, and robbery, and theft, are perpetrated in all countries, though they be punished with death: yet who will say the laws punishing them are, therefore, inoperative? I do not speak as to Europe, but I have seen no part of the United States, where the solemn declaration of the publick will, by its legitimate organ, a popular legislature does not, in most cases, become the rule of civil conduct to the citizen. The temptation to violate the law may be strong, and many there will ever be, to yield to it; but the law incorporates itself with

publick opinion, and becomes the rule of moral conduct in those cases, where there would, without it, be no criterion of action. In Virginia where the usurers have enjoyed a long impunity, I am persuaded, more actual loans have at all times been contracted at 6 *per cent.* than above that rate; and so far from the law raising the ordinary market rate of interest, it has contributed to prevent its transcending all limits before heard of, in an age corrupted beyond all that have preceded it, by a pestilent spirit of speculation. If one make 50 *per cent.* by the purchase and re-sale of property, it is all well; but who even now hears of 50 *per cent.* interest for money (if any such there be) without an exclamation. Sophistry has corrupted the publick mind, by endeavouring to prove the loan of money to oppressed borrowers, like the sale of any other property, for which the buyer never can be particularly distressed; but some portion of sound feeling remains, and he who has grown rich by usury, is not now looked upon, exactly as an ordinary merchant.

Suppose there had been no limit to the rate of discount by the banks during the last fifteen years; can any one question, but that they would have extorted double, perhaps treble the interest they have received? Abolish the laws, and what is to prevent associations of monied men from doing, what we all know the banks might have done?

Mr. Bentham has attempted to shew* the usury laws to be unavailing, by proving that virtual usury is

* Letter 8. p. 65:

allowed, in the sale of annuities, in bottomry bonds, &c. There are many money securities vendible in their nature, which may be transferred for the purpose of raising ready money, or be sold absolutely, and without such particular purpose, according to the intention of the parties. Wherever the real meaning is an advance of money, and illegal interest is reserved, no matter what form the contract may assume, it is usurious. Lord Mansfield has said, "when the real truth is a loan of money, the wit of man cannot find a shift to take it out of the statute."* The English books are filled with common law cases, decided to be usurious, where the contract was disguised by pretended sales of goods, of annuities, &c. The case of bottomry bonds, appears to me no unreasonable exception to the statute; when we consider, that they are generally entered into, in foreign ports, where interest may vary indefinitely; that the only real security is the property hypothecated; and *that* for an advance of money which there is great risk of losing altogether. A bottomry bond executed merely to evade the statute against usury, would stand condemned by the known principles of the law: so, in every case, where the contract is within the meaning of the law, relief is given; and if it be not within its meaning, it cannot be said to be a means of evading its penalties. Nor is it a metaphysical impossibility as we hear it urged, to prove the corrupt agreement. In England, a bill in Chancery may be filed to compel the lender to discover the actual consideration; if it

* *Floyer v. Edwards.* Cowp. 114.

be usurious, he loses all beyond principal and legal interest : in Virginia, he loses in such cases, all but the principal. Unless the usurer be ready to swear to direct falsehood, there is no escape for him from any usurious contract. Surely Mr. Bentham will not convert these generous benefactors of the human race into perjurers ; and after they have contracted for 5 *per cent.* a month, make them swear, they were to receive only 5 *per cent.* a year. It would not be a singularly felicitous conclusion to his panegyrick, to make the four cardinal virtues of usurers consist in avarice, extortion, cruelty, and perjury.

It can hardly be necessary in the progress of this investigation to say any thing of the particular cases put by Mr. Bentham ; because it is easy to put a variety of stronger cases in opposition. I should, however, have expected arithmetical accuracy at least, in the calculations of one, who has certainly studied this problem, with profound penetration.

In the case he puts* of the devise of land worth 2000*l.*, incumbered with 1500*l.* ; his calculation is wrong on his own principles. For though he supposes land to rise in value 33 1-3 *per cent.* in seven years, he allows the devisee but 5 *per cent. per annum* on the 500*l.* left, after paying his debt : while it is manifest, that by selling three fourths of his land, to discharge the incumbrance, he may derive an interest of 33 1-3 *per cent.* in seven years, on the remaining fourth part, in addition to the annual profit at the rate of 5 *per cent. per annum*, which he supposes the land itself to yield.

* Page 47.

But a more important fallacy in the very principles of this calculation, results from his endowing this lucky devisee, with the gift of prophecy ; and enabling him to foresee, not only the precise duration of a seven years war, but to calculate to the smallest fraction, the effect of this long and hazardous conflict, on the rise and fall of property. Nor, after all, does Mr. Bentham shew us, what is to prevent his discharging the incumbrance by borrowing of others at *5 per cent.*, the rate allowed by law ; for which we are told loans could be obtained ; and if no one will lend at the legal rate, it is too low ; and there an end of the matter.

The cases stated, are purely fictitious : and it is worthy of observation, that they have not drawn even from the resources of their imagination, any picture more truly affecting, than one to be found in a grave historian, recording what actually happened, under that condition of things, which is to cure all our evils, and recal Astrea to the earth. On the eve of a war with the Volsci, a violent tumult arose in the Roman state, between the Patrician and Plebeian orders ; principally excited by the oppression of creditors.* The people complained, that while they were fighting abroad, for the liberty of the state, they were oppressed by the rich at home ; that the liberty of the Plebeians was safer in the camp than in the city ; among the enemy, than among their countrymen. This animosity was suddenly inflamed, by an old soldier ; who came into the forum, covered with rags ; his face pale and wasted with famine ; his beard long and ne-

* *Maxime propter nexos ob æs alienum.* Liv. Lib. II. c. 23.

glected, and his disordered hair, rendered his appearance wild and impressive. Even in this condition, he was known to be a brave soldier, who had often distinguished himself in the field; he shewed the scars which he had received in battle. When the anxious crowd gathered around him, he told them, that while he was fighting for the Republick in the late Sabine war, his farm had been wasted, his house burnt, his property plundered, and, to subsist, he had borrowed money on interest;* he first sold his paternal estate, then his other property, to pay the debt, and interest; famine at last threatened him. He had been reduced to slavery by his creditor; he had been imprisoned, and scourged. Then turning his back, he shewed the stripes of his oppressor, yet bleeding. This is the imperfect copy, of an original, from the hand of a master, whose delineation and colouring are true to nature. It is an authentick narrative, of what has happened in a country without laws restraining usury: Mr. Bentham has not been able to imagine any thing near so bad under the operation of the law; and I am content, to rest the argument, so far as particular cases serve to illustrate it, on the authority of history; at least so long as it surpasses in cruelty, all that fables yet have feigned, or fear conceived.

I come now to another species of argument which has been used against these laws, that has not been

* *Tributum iniquo suo tempore imperatum ac alienum fecisse.* Liv. Lib. II. c. 23. At this time there was no law in Rome limiting the rate of interest. Tacitus says that of the twelve Tables was the first; and Montesquieu is of opinion there was none till 398 U. C.

postponed till now, because it is less important than those which have preceded it. In the United States I believe it has produced more effect, than all the abstract reasoning of Mr. Bentham. I mean the example of other countries, which are supposed to have abolished the usury laws, with advantage to themselves.

When one asserts as true any fact in general physics, it is easy for those who may have occasion, to try the experiment anew, and verify the assertion. They who believe with caution, and reason accurately in Natural Philosophy, rarely venture upon a hypothesis, until they have demonstrated the truth of their principal propositions. But in ethicks or politics, one makes a theory to his fancy ; and supports it by arguments drawn from the usages of Formosa, or the customs in Van Dieman's Land ; and no one takes the trouble to inquire, whether these assumptions be facts or fictions. In conformity with this plan, the politicians of Mississippi have proceeded to interdict by their constitution, the passage of any law limiting the rate of interest ; principally, I understand, on the supposition, that no law prescribed the rate of interest in Holland, or France. Now before we Virginians begin the renunciation of a long established, fundamental law, we had better look a little into the authority, on which these facts are published, in newspapers and pamphlets.

I know that Locke in his letter to a member of parliament dated 1691, "on the lowering of interest," says* "every one in Holland may demand what he

* P. 33. fol 2. Vol.

“will for his money and the law will compel the borrower to pay the premium stipulated.” This I believe is a mistake. When Grotius published his work *de Jure Belli*, which was first printed in Paris in 1625, the law of Holland allowed only twelve *per cent.*, to be reserved on commercial contracts, and eight on all others;* Barbeyrac in a note on this passage in 1724, mentions this as the rate limited by law, both in Holland, and in the German Empire. But Locke knew very well, and expressly says, that the low rate of interest in Holland, was in no degree the effect of the law, as he understood it; but of the plenty of money † and that was produced by industry, frugality, and a prosperous commerce. The necessity of such laws is less, as the market rate of interest is more or less fluctuating; and as the wealth of individuals is exposed to more, or fewer vicissitudes. The disciples of Bentham in setting forth the treasures, with which the repeal of these laws, like another Pactolus, will flood the country, forget, that competition in lending will no more produce money, than it will make rivers flow. They mistake the cause for the effect. It is not competition which can create mills, (to take a case already put) but the plenty of water, consumers, &c., which produces competition. Neither is it the number of lenders, which will make money plenty; but the abundance of money accumulated in large sums, which multiplies lenders. Whenever the money thus accu-

* Lib. II. c. 12. § 22.

† Note (1) on the passage of Grotius cited.

‡ See Appendix. (A)

mulated, comes to the hands of usurers ; and they are left to the arbitrary licentiousness of their exactions, without check or control by law ; they will let it out in a manner, to produce the *maximum* of profit to themselves, without the least regard to the publick prosperity. They will manage their affairs better, than to lend simple rustick citizens (whom they will soon learn to treat with contempt) a dollar, without an exorbitant *premium*, and a mortgage on their farms. Once absolve them from all dread of these laws, (which when least enforced, are sleeping lions,) and leave them at large to confederate against the property and industry of the people ; and we should be wholly unable to withstand that consolidated strength, which separate and single handed, has disturbed the peace, and poisoned the happiness of the country. A total repeal, would be more than a tacit assent to usury ; it would be to give a publick sanction, to all past oppression, and all future rapacity.

The example of France, being recent, and the effect of this glorious illumination which is to reform the world, is cited with even a higher triumph : and the statesman of other nations, have been made to re-echo the praises of the wise institutions of Bonaparte, on this perplexing question. No country of Europe had passed severer laws against usury than France. It was in some cases punished with death. This rigour had drawn the attention of its philosophers to the repeal of the several *ordinances* of their kings, long before Mr. Bentham's essay appeared. In 1769, in consequence of some prosecutions in Angouleme, M. Turgot drew up a *memoire* exposing the ill effects

of the law of France, containing many of the arguments used by Mr. Bentham. But it was not until the fires of reform were kindled by the blaze of the French Revolution, that the victory of enlightened reason over vulgar prejudice and bigotry, was complete. In 1804, a decree of Bonaparte was promulgated, enacting that interest should be legal or conventional: the conventional, might exceed the legal rate, by any amount not forbidden by law; and the law forbid no rate.* Here was all that even Mr. Bentham could desire. But so impracticable was it for France to dispense with the usury laws, that Bonaparte, who always acted on the principle recommended to usurpers by Machiavel, (to leave nothing unchanged that can be altered,) in 1807 revoked this decree; fixed interest in commercial contracts at 6 *per cent.*; in others at 5 *per cent.*; and ordained, that all persons convicted of habitual usury before the tribunal of correction should forfeit half the money lent; and if there was fraud or deceit, be condemned to two years imprisonment.†

These are the experiments to which we are referred, as proving the truth of Mr. Bentham's positions, as clearly as he has demonstrated them by abstract logic. Both cases have been utterly misunderstood. That of Holland proves nothing for us, even if it had been truly stated; and that of France, furnishes a conclu-

* Cod. Nap. Act. 1907,

† Code de l'Empire Francais, of 1813. Note to art. 1907. Mr. Storck it seems had not heard of this decree of Bonaparte in 1815.

sion against Mr. Bentham's argument, stronger than any reasoning can be.

In Bengal, where I understand there has been no law limiting the rate of interest, it varies, as Adam Smith informs us, from the comfortable rate of 40, to that of 60 *per cent.*†

But little does he understand of the spirit of laws, who does not know, that the happiness and the prosperity of nations, depend less on the direct operation of government, than on the remote and varied influence which its institutions exert, over the manners, customs, public opinion, and moral character of a nation. A celebrated writer on the laws of England, affirms, that an alteration by Solon in the succession to property, overthrew the liberty of Athens. Before we begin our jubilees, therefore, for the day of deliverance which is at hand for the uncircumcised Jews; before we lead back the money lenders in a triumphal procession into the temple, whence they have been scourged; before we publicly invite speculators and plunderers, to hoist their signs in the streets, and generously offer us any sums, at the moderate rate of one and a half *per cent.* a month; we would do well to consider the probable consequences of this glorious reformation.

Both Mr. Bentham and the Reviewers are aware of the importance of the question in this aspect; and reprobate these laws, "as taking pains to give birth to treachery and ingratitude." These are heavy accusations, and deserve our best consideration.* Let

† Wealth of Nations, 1. Vol. p. 81.

* Bentham, 54 Ed. Rev. 351.

us examine them. Ingratitude is returning kindness with injury ; and the obvious answer to the charge, is, that a loan on interest is a bargain ; and generally a hard bargain on the borrower. The whole object of the lender is gain,

“ For when did friendship take
A breed, for barren metal of his friend ?”

Whatever the conduct of the borrower may be in cases of extortion, it cannot be charged to ingratitude.

The case of usury is not the only one in which law and reason concur, to defeat the execution of contracts deliberately made. Of this, many instances have already been adduced. I will mention another, to illustrate the question now before us. From the imperfect manner in which we preserve the documents which authenticate our acts, men of business cannot always prove the simple fact, of having paid a sum of money. The law has, therefore, wisely ordained, that, after a certain period of time has elapsed, without a re-acknowledgment of a debt, no matter how clearly it is proved, the creditor shall not be entitled to recover. One may have borrowed money without interest, and if he give his note without seal to repay it, the creditor cannot recover it, unless he bring his suit within five years from the date. I do not defend the moral character of a man, who would avail himself of such a defence in a case like this ; but I do defend the law, which from the nature of things, will, in protecting the injured, enable the designing, sometimes to do injustice. It is cruel to expose the poor and oppressed, to extortion and plunder ; if in protecting

them, we in a few instances enable fraud to work iniquity, it springs from the imperfection of all human institutions

I am persuaded, that gratitude is a quality beyond the sphere of legislation. It is a sentiment of the heart, imbibed as its first impression, and lying deep in its dearest affections. It is impressed on us when infants by our mother's care ; it expands thro' childhood, and diffuses itself to all whose kindness or caresses engage our sympathies ; and in the progress of life, blends itself by indissoluble associations, with all the ministering delights, comforts and endearments, with which a merciful providence has blessed human existence. It is the unbought, the unsuborned offspring of the heart ; the spontaneous effusion of the affections ; no considerations of pecuniary interest beget it, no hopes of advantage sustain it, no dread of injury, or loss, or ruin, extinguish it : buy it, and it is no longer gratitude ; bribe it, and it becomes venal and corrupt ; coerce it, and it is hypocrisy. Accordingly, God has taken better care of his creatures, than to leave this first, great bond, which holds the moral elements of the world together, and links us to his awful throne, under their capricious and senseless direction.—Its true and only remuneration, is in the sentiments with which he has endued us ; by which each benevolent action that we do, is reverberated and reflected back upon ourselves ; by which the most precious moments of our existence, are derived from the consciousness of mitigating in others the sense of pain and sorrow ; or of requiting upon them the blessings we have received. It is this which imparts a mourn-

ful pleasure to the saddest scenes of human life ; when with feelings which no human recompense can inspire, no deed of injury repress, we discharge the last duties of affection to a dying friend.

When a reward of thousands was offered for the head of the pretender, when punishment and infamy were denounced against those harbouring one branded with the epithets of traitor and rebel, no one in all Scotland could be found, such an apostate to human faith, as to betray a forlorn and ruined Prince. Man is not a creature, whose whole moral properties are modified by the hard precepts of legislation. He who really receives a favour by the loan of money, will scarcely ever complain of it as a hardship, that he has to repay the money, or return the favour with unkindness. Ingratitude and treachery are infinitely less frequent, than the false imputation of both. Governments stimulate their subjects to rebellion, and call them traitors ; they who are entrusted with power, office, or authority of whatever kind, abuse it, and complain of the unkindness of others, in resisting their tyranny. From the same principle, men of little souls naturally magnify the favours they do, and are prone to suspect they are not acknowledged with due gratitude. They who do disinterested actions, expect no other reward than the sweet solace of their own approbation. He who thinks to purchase greater favours by doing small ones, or none at all ; and reproves with ingratitude one " who owes him no subscription," is worse than the usurer. He has attempted to speculate upon feelings, which can be won only by true liberality ; which are prompted by in-

stincts that no cunning can beguile, and he will assuredly be disappointed of his gains. The usurer who violates the law to extort from the necessitous their hard earnings, adds to his guilt, by reproaching the borrower with ingratitude. The law, then, can have no effect in corrupting the heart, because its feelings are beyond the power of the law. When there is kindness in lending, men will feel and acknowledge it; when there is none, to pretend there is, would be hypocrisy; and to affirm there is not, can never be ingratitude. Besides, if men will think those of whom they borrow tyrants, no law can make them think otherwise; and further than the particular transaction, the law can have no effect in debauching the heart: and in that particular case, the law having said what shall be a just remuneration for a loan, and what extortion, gratitude is out of the question, for a law which it is a virtue to violate, is nearly a solecism in language. As well might it be said to be ingratitude, in a labourer to complain, that a miller has taken half his corn for toll, when it is proved that but for his grinding the other half, the labourer would have starved: that very circumstance proves the iniquity of the transaction. If usurers mean to do favours, they should demand smaller premiums as the necessities of the borrower become greater: when they do this, I will agree with Mr. Bentham in all he says. But so long as "the children who have eaten their cake, are the natural enemies of those who have theirs,"* I cannot perceive, how feelings of gratitude

* Bentham, 89.

can be generated between them, by allowing those who have not eaten theirs, or who in the unequal distribution of it, had a larger share, to speculate on the hunger and want of the improvident, or the unfortunate. On this part of the subject, I had rather appeal to observation than to reason. Let any man look around him, to the origin and progress of luxurious loans; and ask himself, whether it be serious argument, or bitter mockery in Mr. Bentham, to insist, that the borrower shall recognise the sympathising comforter of his misfortunes, in the person of his oppressor.

As to the treachery which these laws are said to produce; it is clear to my mind, that their repeal would lead to worse breaches of faith. The laws proposed to be substituted, provide no farther remedy against fraud and rapacity in the contract of loan; instead of it, the whole civil authority is to be enlisted, to enforce the execution of contracts, iniquitous and oppressive according to my view of them, but even by Mr. Bentham, admitted to be so considered, by the mass of mankind. The abrogation of these laws will not teach men to be just who are by nature otherwise; nor will it enable the oppressed, to bear with more patience the tyranny of the rich. It will neither relieve distress, nor extinguish the sense of it; what will there then be, to prevent the poor debtors, at all times numerous, and who are not likely to become less so by the license to usurers, from gratifying their animosities in a more violent manner; or impelled by the extremity of their sufferings, from bursting forth into sedition and rebellion? How often did this hap-

pen in Rome ?* The abrogation of these laws, would lead to the violation, not of individual contracts only, but to the perpetual recurrence of those civil tumults, in which no contract will be observed : in which, the discordant elements of society, are set in rebellious opposition to each other ; and the furies of litigious discord, and of civil war, will blow their horns upon the mountain.

In opposition to the ill effects which are set forth, as resulting from the laws restraining usury, let us consider a few of the evils, which would spring from their repeal. One obvious tendency of unrestrained usury would be, to separate entirely the monied class of society from all the others, with which it is blended, and by whose corrective and dulcifying influence, its hard, corrosive qualities are softened. Thousands who now live innocently and happily, by incorporating their labour with their capital, would become professed usurers, and draw their profits from the scanty earnings of the poor. A new aristocracy would spring up, worse than any ever known or heard of. The object of a great land proprietor is, to make his property as productive as he can ; this he does by increasing the fertility of the soil, or his own industry : in either case, he is a public benefactor, nearly in proportion to the profit derived from his farm. The usurer, seeks to procure the highest possible premium ; and that will be governed by the necessity of the borrower. What security could society have in such a condition of things, from a great monied aristocracy

* *Ulcus usura vorax. avidumque in tempore fœnus,
Et concussa fides.*

“ wringing from the hard hands of the poor their vile trash,” by extortion and oppression? The ravages of the Roman provinces would be renewed; and we would have occasion for the interposition of government, in the same manner, that the sceptre of Justinian saved Thrace and Illyria, by the edicts I have mentioned. This would be retrospective. Let us rather do works of justice by anticipation: It is easier to prevent than to cure injuries.

Another inevitable effect of the repeal of these laws would be, to throw the whole loss resulting from fluctuation in the price of property, on the borrower. Loans are from year to year. In Virginia they are scarcely ever discharged at the end of the year; the bond is renewed including interest, and thus the debt grows annually. The usurer is very indulgent until it suits his convenience to demand payment; which is generally exactly that crisis, at which the borrower's whole property, now secured by deed of trust, will pay principal and interest. And thus, as the Solomon of Europe has said, “ the usurer being at certainties, and others at uncertainties; at the end of the game, most of the money will be in the box.” This will be more grievous, as vicissitudes in the price of property are more frequent and extreme: it can do more mischief no where, than in Virginia.

Abolish the usury laws, and money lending will become a profession; brokers will establish private banks; money will be deposited with them to lend; all the disposable funds of the country will be in their hands; and by this species of monopoly, they will raise or depress the value of money at pleasure, as

the banks have. They will buy up bonds and money securities at usurious discount, after having depressed the credit of the maker, to suit their purposes. The property of the country will be mortgaged to them ; and they will purchase it at their own price, at sales forced to suit their convenience. Every way, the borrower, in person, property, peace and character, is at their mercy. If he be a merchant, they threaten a protest ; if a farmer, seize his stock and labourers. This is not prophecy, but history.*

Even if these laws were repealed, all that would happen to usurers would be, that their rapacity would be restrained in another, and a more objectionable manner. To suppose a society where there is no authority to protect its members from force, fraud, and oppression, is to imagine a number of individuals, set in furious opposition against each other, and hastening by an irreversible doom to barbarism and extinction. If the statute prescribed no rate beyond which stipulations for interest should be void ; courts of equity *would* according to the circumstances of each case ; and every contract, by which high interest was reserved, would produce a tedious and expensive suit in chancery ; † where the costs and vexation would be more oppressive, to both parties, than the existing

* Quia foeneratores omnem pecuniam mercandis agris considerant. Copiam vendendi secuta vilitate, quanto quis oborator, agrius distrahebant: multique fortunis provolvebantur: eversio rei familiaris, dignitatem ac famam præcepabat, &c. Tac. vi. ann. c. 17.

† Dein strepere prætoris tribunal. Tac.

law. The numerous cases I have mentioned, in which courts of equity have rescinded contracts, because unequal and unfair, from the condition of the parties, leave no doubt, that usurious bargains, would share the same fate.

Bentham has dedicated his eleventh letter, to demonstrating the justice and policy of allowing compound interest. This is treated as a corollary to the principal proposition: and I should leave it to abide the fate of its parent, did it not appear to me, a corollary, not necessarily following, from the admission of Bentham's argument, as to direct interest. Were the money paid ever so punctually, the lender could not always, nor perhaps ever, find another borrower without a moment's delay.—If compound interest be designed as a compensation for loss by delay of payment, then it is not just that it should be allowed; because the interest is greater than the profit which could have been made by the lender, had the money been punctually paid. If it be designed as a premium paid the lender, for the advantage derived from the use, by the borrower, it is unjust; because there is no mode of investing money, in which the profit increases in a regular geometrical progression, as money does at compound interest. If the direct interest be high enough, compound interest on it, will always be too high. Besides, if compound interest be in itself equitable, where is its limit? A year is but a portion of time, consisting of 365 days; it is no fixed commercial cycle, into which, bodies wandering in eccentric and anomalous orbits, periodically return; the revolutions of the earth do not effect the

tide of pecuniary traffick; why, therefore, should interest be compounded every year, more than every day, every hour, every minute, every second? This would finish ~~more~~ rapidly the work of destruction, to which all Bentham's doctrine tends; it would be quite conformable to the mathematical precision which he would incorporate into the domestick and social system: it would at least have the recommendation, of enabling us to calculate the epoch of our ruin, with a certainty as infallible, as we do the approach of the solstitial and equinoctial seasons.

I am sorry in this investigation, to have occasion to mention the opinion, which has been inconsiderately promulgated by some of our own reformers, that humanity has no connexion with legislation. Human reason divorced from her natural and amiable ally, charity for the infirmities inseparable from our mortal condition, perpetually degenerates into cold hearted sophistry. Man was not endowed with benevolent feelings merely for the purpose of giving interest to romance, or of being wasted in schemes of speculative philanthropy. Under the dominion of an enlarged and cultivated reason, they are the sure guides to our moral and political conduct: they are the best lights to our happiness here, and hereafter. God deliver us from that cold and spurious logick, which considers the misfortunes and miseries of mankind, as proper subjects for pecuniary speculation: that human tribunals only co-operate with nature, in leaving the miserable to perish with want, rather than yield them assistance and comfort. Such diabolical opinions are the abortive offspring of a malign-

nant vanity, setting itself in opposition to the laws of God and man ; and contemplating with impious rapture, through the dreary wastes of futurity, the final accomplishment of its own dark, narrow, crooked, and wicked purposes.

I have sometimes heard it seriously proposed, that we should make a trial of repealing these laws, merely for the sake of the experiment ; as if the trial had not already been made. Really I cannot consent, that our legislators should consider the people as so many mice in a recipient of mephitick gas ; and that they are to amuse themselves in their leisure hours, with the agonies of palpitating nature, struggling against the cruel philosophy of its tortures. I rather choose to be hunted by our natural enemies, the cats, than to be preyed upon by unfeeling projectors, who only divert themselves with our pangs. Should they fail in their experiment, can they repair the mischief they may do ? And if they cannot, are they authorised to expose individuals to ruin, that they may be better assured their whole argument is a sophism ? Besides, nothing is more unsatisfactory to these schemers than the result of their own experiments ; if they fail, they are ready to swear it is, because they have not been fairly tried : if a favourable crisis should ensue, no matter by what chance, they ascribe it entirely to their blind empiricism. No, if gentlemen choose to venture their lives in balloons, and diving bells, I wish them a safe deliverance from their dangers ; but I protest against being forced to explore with them, the regions of the clouds, or the abysses of the deep. In submitting ourselves to the authority of govern-

ment, we have delegated large powers to our rulers, but this of making political experiments on us, is not one of them.

In this inquiry, which I have now only to close, I have not been intimidated by the dogmatical denunciation of the reviewers, that no man of sound understanding can now be found, hardy enough to vindicate these laws. I am quite content in such a controversy, that the reviewers and Mr. Bentham, should doubt the sanity of a mind, sustained not only by the reasons I have given, but fortified by the authority of Bacon, and Mansfield, and Smith, and Stewart, and Child; and the ablest jurisconsults and statesmen of France, after three year's experience of the mischiefs of Mr. Bentham's system. It is time that the American mind was disenthralled from the trammels with which these presumptuous and superficial Reviewers would shackle it. I do not know by what kindness or courtesy it is, that they challenge our respect. They have been the systematick revilers of our institutions, laws, manners, and character: and rest their claim to our regard, entirely on the merit of hating with characteristick rancour, their own corrupt rulers, who have blundered into success, without talent or publick virtue. We should not look to the Edinburgh Review for sound politicks, religion, morality, or classical learning, any more than we do to Wilkie, Chauntrey and Laurence for models of the fine arts. We had better continue the old fashion of preferring the immortal monuments of ancient genius,

the Apollo and the Venus, to any thing from the chisel of Chautrey.*

I do not aspire to the praise of having demonstrated any thing, where I know nothing can be demonstrated. I have only suggested some of the reasons, which persuade me, that they whose business it is to establish their proposition, have not only failed in demonstrating it with geometrical rigour as they pretend ; but that they have not adduced a single well-founded objection to these laws : and hallowed as they are, by the

* The Edinburgh Reviewers ask in a tone of derision " where are our Wilkies, Lawrences, and Chautrey's ?" They are shallower politicians than I suppose, if they would have us employ ourselves in making images of stone, and on canvas, instead of peopling the wilderness of the west, with breathing men. When we attempt the fine arts, I hope it will be with better success, than England ; which is singular in Europe, for having never produced a painter or sculptor. The country of Shakespeare, Milton, Bacon, and Newton, has glory enough, to dispense with Reynolds, Lawrence, and Chautrey, who do not deserve to be mentioned, among the mighty artists who have given immortality to marble, and the semblance of divinity to colours. Voct. Comm. ad Pand. pub. 168 & 1704.

Lib. 22, tit. I. §3. Sciendum interim, moribus nostris usuras vulgares annuatim ascendere non posse ultra decimam sextam sortis partem, quoties in sortis securitatem pignus constitutum est. Grotius manud. ad jurisprud. Holl. lib 3, cap 10, num. 29.

Mercatoribus concessam fuisse usura centissimæ conventionione expressa exigenda facultatem. 4 oct. anni 1540, art. 8, vol. i, plaut. Holl. p. 317.

§5. If illegal usury be reserved, the contract is void only for the excess.

awful sanction of innumerable ages, they should not be irreverently plucked away. They are not like the exploded edicts of despotick power, pretexts for plunder and oppression ; nor have they been enacted, to support a usurped authority over the liberties of the people ; they are one of the few checks, which even the worst rulers, have imposed on the worst subjects, for the protection of the poorest.



APPENDIX.

(A) WHETHER it be an error in Locke to assert, that interest is affected by the plenty or scarcity of money, or not, it is not incumbent on me, to defend an opinion on which I do not rely. Hume has written an Essay [see Hume's Ess. Vol. I. 327.] to refute this assertion, which does not appear to me so satisfactory, as his political reasoning generally is. "Silver (says he) is cheaper and more plenty than gold, but do you pay more for it?" They who assert the rate of interest to be affected by the plenty or scarcity of money, do not mean, that the effect is produced by the absolute quantity of the precious metal as geometrical magnitudes, representing a particular value; but by the excess or deficiency of the circulating medium, whatever it be; this argument, therefore, is frivolous, so long as one grain of gold is to all economical and commercial purposes, equivalent to twenty grains of silver.

High interest he says, arises from three causes, "1. a great demand for borrowing, 2. little riches to supply the demand, 3. great profits from commerce." Does not the second cause admit the plenty of money to affect the rate of interest? unless indeed he insist, that money is no part of the riches of an individual or a nation. It is a very small part of the wealth of a nation, still it is a part.

Again (he says) “an increase of commerce raises a great number of lenders, and by that means produces a lowness of interest.” But how does an increase of commerce multiply lenders, unless it be by increasing the money to be lent? commerce cannot be lent. He says too [p. 336.] “industry which sinks interest commonly acquires great abundance of the precious metals.” But he does not shew how industry could sink interest without this increase of money.

It is evident that the greater the sum which any man has to lend, the less he can afford proportionably, to take for its use; as the greater the capital of a merchant the less the profit on any one article which he can afford to carry on his trade with. The effect of industry is to supply the place of money, as well as to accumulate it. An active and intelligent merchant will not have to keep by him half the unprofitable stock, with a lazy booby; his enterprise is a fund mortgaged to his credit, because it produces money by the time he wishes it. But if industry did not acquire money, the merchant could not rely on this resource; it is by the quality of raising money then, that industry lowers interest. The demand of borrowers is for money; is it not evident then, that the more persons there are in a country worth 10,000*l.* per annum, clear revenue, the more persons there will be to offer loans; and consequently, the lower *cæte is paribus* will interest be; and is it not equally evident, that the more money there is in a country, in proportion to its inhabitants, &c. the greater the number of persons will be who will have such a revenue? All the other means that men have of dispens-

ing with the necessity of keeping any portion of this money by them, as industry, frugality, &c. are so much clear, added to what they can lend, and so much deducted from what they can afford to take for the use; but all this by no means proves, that with the same industry, frugality, &c. the abundance of money will not enable money owners to lend at a lower rate. This however has nothing to do with the question of lowering interest by repealing the usury laws.

(B) Verbal critics may object to the motto affixed to the title page, that the principle would arrest the progress of amelioration in our laws. The maxim was never applied in its full extent to legislators; they are privileged to amend and repeal; but they should do either with a timid circumspection; especially on principles of doubtful policy, "where the necessity is not urgent, nor the utility evident." I apply the maxim exclusively to usurers, who violate the law from motives of interest, and afterwards satisfy their consciences, by thinking the prohibition itself iniquitous. No individual can exempt himself from the moral obligation to observe the laws, under pretence that they are unjust. The penalty imposed is not merely a debt accruing to the state on conviction. The law is the declaration of the publick will, that the act made penal, is prohibited and proscribed. Were the penalty no more than an ordinary debt, it would involve the absurdity, of making the statute tolerate the very evil, which is forbidden: he who violates the law, would often gain it, and thus fare better than the conscientious man who observes it: which would convert the penalty into a premium.

(C) I had intended to have made no mention of the newspaper essays, pamphlets, speeches, &c. which have appeared on this subject in Virginia, because, so far as I have seen, or heard, they contain nothing new. All that is argumentative in them, is derived from Jeremy Bentham ; and it is right, that in opposing reasoning, I should ascribe it to its real author : the true method of investigation, too, we are told by lord Coke in such cases, is to seek the fountain, rather than follow the downward course of the stream. Some observations which I have heard in conversation, have been considered more at large perhaps, than they deserved to be.

There is one gentleman however, who speaks and writes equally well ; whose speech on this subject having been published and circulated, ought to be mentioned ; lest they who may do me the honour to read the remarks I submit, should think I had not seen it. I have read it with attention—and have not been able to discover in it, any argument which was not to be found in Bentham's defence and the Review. His demonstration is so brief, (consisting of only eight lines, with the other parts of the pamphlet, amplify and adorn) that I transcribe it. “If it be morally lawful
 “to take interest for the loan of money, it is morally
 “lawful to take any interest fairly agreed on. This in-
 “ference is justified by a proposition universally true,
 “that all contracts, between persons competent to
 “contract are binding, unless there be fraud or mis-
 “take. Sir, the inference is irresistible ; and con-

“tracts for interest must be admitted to stand on the same ground with all other bargains.”*

It is not easy to determine whether this mode of argument be the syllogistick, the dialectick, or the rhetorical; it is certainly not the mathematical. Like the syllogism, the demonstration consists of three parts; it differs however from the most approved specimens of that method of logick, in making the *major* proposition assert, what evidently required proof, that what is moral in any degree, is in every degree; for the whole dispute turns on a substantive distinction, between sufficiency and excess, which exists in every thing capable of increase and diminution. It is morally as well as legally allowable, for a landlord to distrain for rent; but surely it is neither one nor the other, that he should take property to fifty times the amount of arrearages: how then does it follow, that it is morally lawful to take any interest, because it is admitted, that we may take some? Then the words “*fairly agreed on,*” might of themselves be matter for a separate disquisition.

Such a master as Aristotle, would probably object to the *minor* of this demonstration, that it takes it for granted, “*all contracts are binding, unless there be fraud, or mistake;* since in cases of duresse and oppression, there is neither. If the speaker mean to include them, in the words *fraud* and *mistake*, the question recurs, does either exist in this case?

Is “the inference irresistible, or must contracts for interest be admitted to stand on the same ground, with

*P. 8 of Speech.

other bargains?" I have endeavoured to shew in the body of the preceding remarks, that there are many cases, in which the legislature rightfully interferes with individual contracts, and that the loan of money is one.

The annunciations of these propositions is not argument, but assertion; and assertion founded on supposed concessions, which no one who defends the usury laws can make. It is nothing unusual in syllogistical reasoning, to take the question to be proved for granted, or in technical language, that the demonstration should be *petitio principii*; that much perhaps should be allowed an animated orator in the ardour of debate; but it is really conceding too far to any speaker, to grant all three of his propositions to be true, without any kind of proof. A syllogism beginning with a demand of the main question, proceeding with an inference not true, and ending with a postulate not granted, would in no case have all the force of a geometrical demonstration; were we to abandon the wise institutions of our forefathers on such reasoning as this, I am at a loss to conceive, what there can be just in morals, wise in law, necessary in politicks, or sacred in religion, which might not be shewn to be absurd, and be exploded from our system with derision and contempt.

The author of the speech says, all the publications in vindication of the laws for the prevention of usury,* "*indicate an ignorance, both of the facts and principles connected with the discussion, so extreme, that an answer however complete to all that has been*

* P. 38 of the notes to the Speech.

said, would have left the subject precisely where it stood before." Yet I dare say, there was not one of these writers, who was not well persuaded, that he had demonstrated his proposition as conclusively, as this speaker manifestly thinks he has, the negative. This diversity of opinion among men more learned than I, teaches me, to offer with diffidence the remarks I have made. They are addressed to the good sense, and virtuous dispositions of a people, whose interests and happiness must ever be dear to me; and are prompted by the deliberate conviction of my understanding, without the mixture of an unkind feeling toward any human being.

APPENDIX,

To the Second Edition.

IF my leisure had permitted, I should have pursued the train of reflections originally published, and have inquired what amendments in the principles of our law, or their execution, are necessary to the state of the times. I am far from thinking the laws as they stand, have been injurious to the publick. If they have been often violated, it is better to connive at iniquity than to license it. I cannot help regretting, that our courts of justice, controlled perhaps in some degree by the arguments of the reformers, have given our statute, which is as broad, to say the least, as the English, a narrower interpretation: and have suffered bonds and notes to be made for the express purpose of raising money; and sold by the intervention of a fictitious endorser or assignee, merely to evade the statute. They have also allowed sales of stock at any discount, and almost under any circumstances. The facility given to covering usurious contracts, is not the least evil, which the banks have inflicted on us. Stock has a market money price, as ascertainable as that of a bank note—And stock jobbing is a vocation, not at all to be encouraged, or even recognised among honorable professions. Our legislature have it in its power to put an end to two very

destructive species of traffick—the usurious speculations in private paper, and in publick stock.

The theory of the law supposes one who gives beyond the legal rate of interest to be in distress—it adopts the excess as the evidence of his necessity ; it applies with equal force to every case in which a loan of money is the object, and illegal discount made on the advance. “The wit of man cannot find a shift to take it out of the statute,” yet our courts have allowed necessitous men to make notes to raise money ; and to sell them at any discount by brokers ; and, yet have sustained actions on them, because the purchaser did not know the object of the maker. This fictitious paper should be drawn from circulation ; it is no advantage, but a hindrance, to commerce. It is enough for commercial men to give easy negotiability to paper, which is the evidence of a genuine debt. This fictitious paper only multiplies insolvencies ; increases personal securities, (a great evil) and corrupts, in some degree, the circulation of good notes. Why should it be tolerated ? It is no answer to say, that to condemn it would stop the negotiability of all paper. No such thing : it would stop that of vicious paper only ; and nothing can be more desirable. The Lombardy street merchants feared the two cases of notes condemned as usurious, and for gaining considerations between maker and indorser, would have this effect ; but experience proved the contrary. It is easy to prevent any real iniquity ; for it is admitted, where the note passes directly from maker to holder, for an illegal consideration, it is void. Now, it is im-

possible but that some one of any number of holders and indorsers, should be privy to the transaction—let the law, then, throw the loss on the privy, and it will put an end to an infamous traffick. If no name be indorsed, the holder must take it directly from the maker; then, if the discount was illegal, the note is usurious. The first indorser was the original holder; he was a privy. Let the note come to whose hands it may, the maker did not receive a fair consideration for it. By the theory of the law, he should not be made to pay it; but the indorser may; so he should be made to pay it back to the now holder, and the maker should be exonerated; or, if the new holder also committed usury, he should have no remedy against indorser or maker. Thus, by throwing the loss on the first guilty taker, and denying all remedy to every accomplice, or guilty holder, the circulation of these notes would be effectually prevented, and the open defiance of the law arrested.

The sale of bank and publick stock, affords a mischievous facility to usurious negotiations. The price of stock fluctuates very much it is true—still it has on any given day, as fixed a market price as money. The difficulty of detecting the intention to lend, makes this a favourite mode of evasion. Usurers have never wanted *mirce artes* for getting over legal impediments, since the times of the early Romans. Legislatures must outwit them. When they adopt a form of negotiation which renders it impossible to detect one badge of usury, we must affix another, which shall be equivalent, that they cannot so easily remove. In the sale of stock, which is another form

of money, whenever the discount is illegal, taking stock as money at the market price, the presumption of usury should arise; and it should lie upon the usurer to prove it was a sale, and not a disguise to evade the statute. If it be objected, that this would be difficult, I allow it; the case presents difficulties either way. And wherever this cannot be otherwise adjusted, I would accumulate them on the first delinquent. He who confessedly and voluntarily violates the law, should lie under all its burthens; the difficulty is one of his own seeking; and surely it is not for him to exclaim against it.

It must be admitted, in ordinary times, that 6 *per cent.* is more than an ample allowance for the fluctuation in price of any good stock, in twelve months. Whether the parties contemplated a variation beyond this, and the contract was on speculation, the jury should determine from all the circumstances; but if this did not appear to their satisfaction, it should be condemned as usurious—such a law, if made ten years ago, would have saved this country infinite calamity and disgrace; and would have preserved thousands of our valuable citizens from a ruin, which is hopeless and irretrievable. And even the harpies of speculation, and the publick robbers, would have been eminently indebted to those who enacted such a law; for they too might have exerted their enterprise in some happier direction; they might now have enjoyed the fruits of genuine industry, instead of growling over the unprofitable spoils of their rapacity. It is an old observation, that beasts of prey are ever poor. Let not the publick deceive themselves in the

application of this remark to usurers. They see many gorged to satiety, because they are fresh from the carnage they have wrought. It is not a fair day, says Sancho, until the sun is down. Let us wait to see how these fatted Hyænas will cut up—how they will tallow on the caul and kidneys—I doubt if they will leave enough to pay funeral expenses—and sure I am, neither monumental marble, nor the more transient effusion of tears for their loss, will record their virtues, or the regret that another and another unit is added to the bills of mortality. Wo! to them, who, in the day of their youth, forget in their anxiety to amass wealth, to hoard the consoling recollections which might cheer the twilight of their desolate age. Wo! to them, who think because the morning is fair, and the sun gay, and every breeze asleep upon the waters, that danger has departed: each breath may wake the angry spirits of the deep; they ride on every wave, and shriek in every blast.

Much stress is laid on the point, that price cannot be regulated. If writers mean, that no one standard can represent the different values of a given quantity of any commodity to all men, the position is true. In that sense, I have heard of no one who ever controverted it. If they mean, that no price can be affixed, beyond which it is, in most cases, injurious to the purchaser or borrower to buy or borrow, (which is all that the usury laws presuppose) it is untrue. Shall we be told price cannot be regulated; when I have already enumerated so many cases in which it is regulated. What are tolls at mills, bridges, ferries, &c., the assize of bread, &c., but regulations of price.

In fact, the usury laws do not attempt to regulate price. Price is what is given in one commodity for the exchange of another. But in the loan of money, there is no exchange of subjects; money is given and money is received. The thing lent is returned, not in like kind only, as in the species of bailment called by the civilians *mutuum*, but the money returned to every purpose that money can be applied, may be considered as identical. If it be only an exchange of one sort of money for another, as gold for silver, and both parties pay over on the instant of the contract, I believe no usury can be committed. The laws then do not regulate the price of money, for one may give what he please in one kind of money for any other kind; or may give what quantity of any other commodity, he please, for money, without incurring the penalties of the laws. But he shall not be allowed to let out the mere use of money—to be returned in what has the properties of identity; and receive beyond a given *premium*. But in the numerous cases I have put, price itself is regulated.

The argument on this objection, was so direct a corollary from many propositions laid down, that I thought it unworthy of a separate refutation. Whatever may have been my success in the controversy, I was in search of the great question. I knew that Mr. Bentham was an adversary, whom no man of sense would pretend to treat lightly, and I applied my industry to removing the most formidable of his objections. While pursuing such gigantick game in a wide sea, I had neither leisure nor inclination to observe the nibbles of minnows.



[The following was found among Mr. Gilmer's MSS. without a title. It seems to be a translation from Rousseau—though we have not been able, on the examination we have made, to light on the original.]

Vertical line of text or markings on the left side of the page.

THE narration of my long dreams is hardly begun : and I already feel that it draws toward a close. Another amusement has succeeded it, which absorbs my attention, and no longer leaves me time to meditate. I devote myself to it with an infatuation which is extravagant ; and which makes me laugh at myself whenever I think of it ; but I yield to it no less on that account, because I have no longer any rule of conduct, but to follow my inclination without restraint. I have no command over my destiny ; I have only innocent inclinations ; and the opinions of mankind will, in future, be of no concern to me : even wisdom dictates that I should, as far as remains in my power, do whatever soothes me—whether of a public or private nature, without any rule but my caprice, and with no other limit than that prescribed by the little strength which remains to me. Behold me, then, seeking in vegetables my only nourishment ; and in botany my entire occupation. Already advanced in life, I received my first ideas of botany in Switzerland from Dr. D'Ivernois ; I herborised with him successfully enough to obtain a passable knowledge of the vegetable kingdom. When past sixty years of

age, and of sedentary habits, at Paris, I began to want strength for long herborizations, and was moreover sufficiently devoted to copying musick, to need no other occupation; I therefore abandoned botany, which was no longer necessary to me: I had given away my herbarium; sold my books; content sometimes to recal the names of the common plants, which I found in my walks about Paris. During this interval, the little which I had learned was entirely effaced from my memory, and much more rapidly than it had been engraven there.

All at once, above sixty-five years of age, deprived of the memory I once had, and without strength to traverse the fields, without a guide, without books, without garden or herbarium, this folly returned to me, and with more ardour than at first. Imagine me; then, seriously occupied with the sage project of committing to memory, the whole *regnum vegetable* of Murray, and of understanding all the known plants upon the earth. Not in a condition to purchase books on botany, I imposed on myself the task of transcribing what I borrowed; and resolved to compose a herbarium richer than the first, in which I would arrange the plants of the sea, the Alps, and of the Indies. I commenced with the Chick-weed, the Chervil, Borrage, and Senceis; I herborised learnedly round the cages of my birds, and at every new sprig which I found, I said to myself "one plant more."

I do not attempt to justify the interest I take in following this new fancy. I find it very rational, convinced that in my situation, to abandon myself to amusements which sooth me, is true wisdom, and

even a great virtue ; it is the way to prevent any leaven of hatred or revenge from rising in my heart ; and to find in my destiny, even yet, a relish for some enjoyment : it is assuredly a natural pleasure, purified from every angry passion. It is to revenge myself on my persecutors after my own manner ; I could not punish them more severely than by being happy in spite of them.

Yes, doubtless reason permits, and even prescribes, that I surrender myself to the indulgence of whatever disposition I have, and which nothing hinders me from gratifying ; but it does not inform me why I am amused with a vain study, made without profit, and almost without progress, and which required of me, old dotard, decrepid, and clumsy, without any facilities, or even memory, the exertions of youth, and the lessons of a scholar. It is an eccentricity which I wish I could explain ; properly elucidated, it might shed a new light on that knowledge of myself, to the acquisition of which I have consecrated my last leisure.

I have sometimes thought profoundly, but rarely with pleasure, most frequently against my humour, and almost by force ; reverie delights and amuses me ; reflection fatigues and depresses my mind ; to think, has ever been to me, an occupation, painful and joyless. Sometimes my reveries finish with meditation, but my meditations more frequently end in reverie : in these vagaries of the mind, my soul soars through the universe on the wings of imagination, in ecstasies surpassing all other enjoyments.

So long as I could taste this felicity in its purity, every other occupation was insipid. But when thrown by extraneous causes into a literary career, I felt the fatigue of mental exertion, and the importunity of a fatal celebrity; I felt at the same time, that my sweet reveries became languid and cold; and forced to labour in spite of my feelings. I can no longer enjoy, but very rarely, those delightful raptures, which for fifty-five years, have supplied to me, the place of fortune and of glory; and with no other expense than that of my time, have rendered me, in idleness, the happiest of mortals.

I sometimes feared, in my reveries, that my imagination, terrified at my misfortunes, might direct its whole energy to their contemplation; and that the continued sense of my misery, might, by degrees, petrify my heart, overpowered at last by their weight. In this state, a natural instinct made me fly melancholy impressions; imposed silence on my fancy, and fixing my attention on surrounding objects, made me analyze, for the first time, the great theatre of creation, which, till then, I had contemplated only in the mass.

Trees, shrubs, plants, are the vesture, and the ornaments of the earth. Nothing is so sad as the aspect of a field unclothed, and brown; which offers to the eye, only stones, clay, or sand. But animated by nature, clothed with her nuptial robes, interspersed with rivulets, and enlivened by the song of birds, the earth affords in the harmony of the three kingdoms, a spectacle full of life, of interest, and of charms; the only spectacle, of which the eyes and the heart never become wearied.

The more sensible the heart of the beholder, the more intense is the ecstasy this harmony excites, produced by this soothing concord. A reverie, soft and profound, invades his senses, and he loses himself with delicious ebriety, in the immensity of the beautiful system, with which he identifies himself. Individual objects escape him ; he sees nor feels any thing, but in the immense whole. Some particular circumstance must arrest his mind, that he may observe in detail, the universe which forces itself on his attention.

This naturally happened to me, when my heart soured by long distress, collected and centered all its energies, to preserve the remains of warmth, ready to evaporate and expire in the abyss into which I had fallen. I wandered with indifference through forests and over mountains, not daring to think, for fear of exasperating the sense of my misfortunes. My imagination, rejecting painful objects, left my senses to the light but pleasing impression of the objects around me. My eye roved incessantly from one to another, and, in so great a variety, it was impossible but that it should find some, on which it reposed with more pleasure, and longer, than on others.

I delight in this recreation of the eyes, which in melancholy repose, amuses and beguiles the mind, and suspends the recollection of our misfortunes. The nature of the objects contributes a good deal to this diversion, and renders it more seducing. Their sweet odours, their brilliant colours, their lovely forms appear to dispute with emulation their respective

claims to our attention. Nothing but a love of pleasure is necessary to yield to sensations so soft : that such is not their effect upon all who behold them, arises in some cases, from a want of natural sensibility ; but more frequently from the mind being occupied with other ideas, which allow them to contemplate sensible objects only by stealth.

Another circumstance which has contributed to divert the attention of men of taste from the vegetable creation is, the custom of seeking among plants, drugs and medicines. Theophrastus, the only botanist of antiquity, studied them for other purposes : but thanks to a certain Dioscorides, a great compiler of recipes, and to his commentators, medicine has so taken possession of plants, that one who does not seek for simples, to learn the pretended virtues which he is pleased to ascribe to a third or fourth part of them, is supposed to have no object in botany. They cannot conceive that the structure of vegetables merits any attention. Men who spend their lives in curiously arranging a number of shells, ridicule botany as an useless study, when not united, as they express it, to a knowledge of the properties of plants ; that is, when we do not abandon the observation of nature, which never deceives us, and which informs us nothing as to these occult qualities, to deliver himself to the authority of men, who are liars ; who make affirmations, which we are to believe on their assertions, dictated too, for the most part, by the self interest of others. Stop for a moment in a meadow enamelled with flowers, to examine the different species which adorn it ; they who see you, will take you for

an apothecary, and will inquire for the herbs which cure the scald in children, itch in men, and glanders in horses.

This disgusting prejudice has already much abated in other countries, especially in England—thanks to Linnæus, who has contributed to withdraw botany from the schools of pharmacy to natural history, and to economical uses. In France, the study is less pursued by men of the world, and still is in a state so barbarous, that a gentleman from Paris, seeing at London, a garden filled with trees and rare plants, as the greatest compliment he could give, exclaimed, “what a garden for an apothecary!” On this principle, the first apothecary was Adam, for it is not easy to imagine a garden of better assorted plants than Eden.

These medicinal associations are surely not the most likely to render the study of botany agreeable; they wither the verdure of the fields; they tarnish the lustre of flowers; they parch the freshness of groves, and render shade, luxuriance and bloom, insipid and disgusting: the graceful structure of plants cease to be beautiful, when we gather them to pound in a mortar; we would no longer seek garlands for shepheresses among herbs intended for clysters.

Pharmacy never sullied, to my eye, the beauties of the field; for nothing was farther from my thoughts, than tisannes, and plasters. It often occurred to me while beholding the fields, the groves, and forests, with their countless inhabitants, that the vegetable creation was a vast magazine of nourishment, provided by nature for the sustenance of man and other

animated beings : but the idea of drugs and remedies was never suggested to me. There is nothing in these various productions, indicating their fitness for such purposes ; nothing to determine our choice, were we to prescribe them as remedies, as they are indications of their fitness for food. The delight with which I wander through groves, would be poisoned by the recollection of human infirmities, if I allowed myself to think of fevers, the stone, gout, and epilepsy. Yet; I will not deny to vegetables, the great medicinal virtues ascribed to them ; I will only say, that if they really possess these qualities, it is from pure malice to the sick, that they continue to be unwell, for there is not one of all the diseases, to which we are subject, that cannot be radically cured by twenty different herbs.

These dispositions of the mind, which refer every thing to our material interest ; which perpetually prompt us to seek profit and gain ; which would make us look upon all nature with indifference, were we at all times in health, never can belong to me. I feel myself, especially in this, in contradiction with all other human beings : whatever relates to my wants, depresses and afflicts my mind ; I enjoy the genuine charm of intellectual pleasure, only in forgetting the desires incident to my physical existence. Even when I had faith in medicine, and when its remedies were agreeable, I never found delight in its study. It is only when my soul, disengaged from every consideration of the body which it inhabits, immerses itself in the magnificence of nature, that I enjoy the transports of pure and disinterested contemplation. Without having at any

time, great confidence in medicine, I have had a great deal in physicians whom I esteemed—and I submitted my health entirely to their authority. Fifteen years of experience have instructed me to my cost, with what little advantage. It is only by returning to the dominion of nature, that I have recovered my original constitution. When these physicians had no other complaint against my distresses, who can wonder that I am a living proof of the vanity of their art, and the impertinence of their visits.

No, nothing that is personal, nothing that belongs to the interest of any body, can truly occupy my soul. I never meditate or muse more rapturously, than when I forget myself. I feel that these ecstasies, these inexpressible transports, dissolve me in the great system of beings, and identify me with nature herself. So long as men were my brothers, I framed schemes of earthly felicity. These plans being always relative to the whole, I could be happy only in the publick felicity. The idea of private happiness never touched my heart, but when I found my brothers seek theirs in my misery. Then, that I might not hate, I was forced to shun them: then seeking refuge in the common mother of us all, I found in her arms an asylum from the persecutions of her children. I am a *solitaire*, or, as the world express it, I have become unsociable and misanthropick, because the most savage solitude is preferable to the society of wicked men, cherishing only treachery and hatred.

Forced to suspend the operations of my mind, from the apprehension of brooding over my misfortunes; in spite of myself, compelled to repress the

struggles of an active but melancholy imagination, which such continual agonies might overwhelm and disorder; driven to the extremity of forgetting mankind, who assailed me with ignominy and outrage, lest indignation might exasperate me against them, I could not concenter every thing in myself; my expansive soul, in spite of my condition, struggled to extend its sympathies and its being to other objects; I could not as formerly, plunge into the mighty ocean of nature, because my faculties, relaxed and enfeebled, no longer found fixed and determinate objects within their reach; and I had not the vigour to swim in the chaos of my early ecstasies. My ideas were but sensations, and the sphere of my understanding does not extend beyond the objects which surrounded me.

Flying men, courting solitude, meditating little, thinking less, but endued with an ardent temper, which prevented my sinking into listless and melancholy apathy, I began to occupy myself with every thing about me, and by a natural instinct, I gave the preference to the most agreeable objects. The mineral kingdom contains nothing attractive; its riches, buried in the bosom of the earth, appear to have been removed from our observation, that they might not tempt our cupidity; they are a reserve to supply the place of true riches, more within our reach, the relish for which we lose, in proportion as we are corrupted by the other. Then we call in labour and industry to the assistance of our miseries. We dig in the bowels of the earth—we penetrate its depths, at the risk of life—and at the expense of health, after imaginary wealth, instead of being content with the boon,

which, when we know how to enjoy it, is spontaneously offered. We fly from the sun and the light of day, which we are no longer worthy to behold, and very properly bury ourselves alive, because unworthy to live in the light of day: quarries, mines, forges, furnaces, anvils, hammers, smoke and fire, supplant the soft images of the cultivated fields. Visages wan and languid with privation in the infectious vapour of mines, the sooty smith, the hideous Cyclops, are the spectacles which this subterranean scenery supply, in the place of verdure and flowers, the azure sky, the amorous shepherds, and the robust labourers on the bosom of the earth.

It is easy, I allow, to run about collecting pebbles and stones, to fill one's pockets, and to assume the air of a naturalist; but, they who busy themselves in making collections of this kind, are generally rich ignorants, who procure them only for the purpose of parade. To profit by the study of mineralogy, one must be a chemist, and a natural philosopher, acquainted with physicks; he must make painful and expensive experiments; must work in the laboratory; must spend much time and money amid charcoal, crucibles, furnaces, and retorts; in the smoke of suffocating vapours—often at the risk of his life, and always at the expense of his health. From all this irksome and oppressive toil, there generally results less knowledge than presumption; for the most ordinary chemist thinks he has revealed the great secrets of nature, when he has discovered, perhaps by accident, a few combinations of art.

The animal creation is more within our reach, and, certainly better deserves our attention ; but has not it also its difficulties, its embarrassments, and its disgusts, and its pains ? especially to a solitaire, who has no assistance to hope from any one, either in his amusements or his labours. How could I observe, dissect, study and understand, the birds of the air, the fishes of the water, quadrupeds fleetier than the wind, and stronger than man—who are as little disposed to offer themselves to my researches, as I am to chase or subdue them by force. I had then, for a resource, only snails, worms, and flies. I might pass my life in running out of breath after butterflies, impaling the poor insects ; in dissecting mice when I should chance to catch them ; or, the carcasses of such beasts as I might find dead. The study of zoology, without anatomy, is frivolous ; by anatomy we learn to class them, and to distinguish their genera and species. To study their habits and characters, we must have aviaries, fish ponds, and menageries ; we must confine them by whatever means we may, to keep them within our power. I had neither inclination nor ability to hold them in captivity ; nor the activity to keep pace with them in their flight when at large. I had no alternative, then, but in the carcasses of the dead ; to dismember them ; to extract their bones ; to burrow at leisure in their palpitating entrails. Frightful indeed is the exhibition of an anatomical museum, of putrid bodies, livid flesh, disgusting bowels, horrible skeletons, pestilential vapours ! truly it is not here that J. J. will seek his amusements.

Brilliant flowers, enamelled meadows, cooling shades, refreshing rivulets, thickets, verdure, purify my imagination, sullied by these hideous images; my soul, dead to all great emotions, is no longer affected but by sensible objects: I have no longer any thing but sensations, and it is only through them, that I experience pain, or pleasure. Drawn by the smiling objects which surround me, I consider them, I contemplate them, I compare them, and finally learn to class them: behold me, then, so far a botanist, as it is necessary for him to be, who desires to study nature, only to find new reasons for admiring and loving her.

I did not seek instruction—it is too late—besides, I have never seen that too much science contributes to our happiness. I seek for simple and sweet recreations, which I can enjoy without pain, and which beguile the sense of my misfortunes. It costs me neither expense nor labour, to wander carelessly from plant to plant, to examine them, compare their characters, mark their relations and differences; finally, to observe their organization; then to follow the march and the sports of nature, in her living organs; to trace her general laws, the reason and end of different structures, and to admire with gratitude, the creative hand which has framed me with capacities to enjoy them all.

Plants appear to have been sown with profusion over the earth, as the stars through the sky, to invite us by the united attractions of pleasure and curiosity to the study of nature: but the stars are remote from us; a knowledge of them requires much preliminary in-

struction ; many instruments and machines, very long ladders to bring them within our reach. Plants are already within our reach ; they spring beneath our feet, and blossom in our hands ; and if the smallness of their parts sometimes conceals them from our view, the instruments which disclose them are more simple than those of astronomy. Botany is the study of an indolent and listless solitaire : a pin and a lens are all the apparatus he requires, for his observations. He strays at random from flower to flower ; he views them all with interest and curiosity ; and immediately he embraces the principles of their structure ; he enjoys in observing them, an unmixed pleasure. There is a charm in this idle recreation, which can only be felt in the serenity of the passions—but in that state, it is enough to render life sweet and happy : immediately we blend with it any motive of interest, or feeling of vanity, whether of obtaining places, composing books, or of displaying our knowledge ; immediately we herborise to become authors and professors, the illusion vanishes ; we behold in plants but the instruments of our passions, and no longer derive pleasure from their contemplation : we then desire to learn only to display what we know ; and in the depths of forests, as on the busy theatre of the world, we will be engrossed with seeking admiration ; or confining ourselves to cabinets and gardens, instead of contemplating wild nature, we perplex ourselves with methods and systems, subjects of eternal dispute, which will not make us acquainted with a plant the more, and in truth shed no light on the natural history of vegetables. Hence the hatred and jealousy

which rival celebrity kindles among botanists—as much, and perhaps more, than among other learned men. They denaturalize this amiable study; they transplant it to cities and academies, where it languishes like an exotick in the gardens of the curious.

Very different dispositions have created in me a passion for this study, which fills the void of all the others which I have abandoned. I clamber up rocks and mountains; I bury myself in valleys and in woods, to obliterate from my memory, as far as I can, men and their persecutions. I hoped that in the shade of the forest, I might be forgotten; I felt myself free and tranquil, as if I had no enemy; or, as if the foliage of the trees guarded me from their attacks, as it excluded them from my memory; and I imagined in my folly, that in ceasing to think of them, they would forget me. So sweet was the solace of this illusion, that had my situation, my feebleness, and my necessities permitted, I would have abandoned myself entirely to it. The deeper the solitude in which I lived, the greater was the occasion of some object to fill the vacancy created by the absence of those which my imagination rejected, or my memory excluded. This was afforded in the spontaneous productions of the earth, which unsubdued by man, offered them every where to my senses. The pleasure of penetrating forests, in search of new plants, disguised the motive of escaping from my enemies; and placed where I saw no trace of mankind, I respire more freely—as in an asylum, where their hatred can no longer pursue me.

I shall never forget a herborization, which I once made on the side of Robaila, a mountain of Justice Clerc. I was alone. I sunk into the intricacies of the mountain, passing from shrub to shrub, from rock to rock, until I came to a recess, so secluded, that I never saw any thing more wild and lonely. Firs intermixed with prodigious beeches, fallen from age, and interlocked one with another, inclosed this spot with nearly impenetrable barriers: some openings in the dismal inclosure, presented only perpendicular rocks and horrible precipices, over which I could look, only by lying down. The hooting owls,* ospreys, and eagles,† sent forth their screams from the declivities of the mountain; the notes of some smaller birds, rare, but more familiar, tempered the horror of the wilderness; there I found *Dentaria*, ‡*Cyclamen*, *Ophnys*, the large *Laserpitium*, and a few other plants, which charmed and amused me for some time. Insensibly overcome by the strong impression of the scene, I forgot botany and plants, and seated myself on a tuft of lichens and mosses, where I began to muse more at my ease, imagining that I was in a sanctuary unknown to the world, where my persecutors had no power to hurt me. A sentiment of pride blended itself with this reflection. I compared myself with those adventurous navigators who discover new islands; and I said with complacency, doubtless

*Le Duc.—grand Duc *Strix bubo*.—petit Duc *Strix scops*.
 †Orfraie *Falco Ossifragus*. ‡*Dentaria Pentaphyllos* or *enneaphyllos*—there is no such species as *heptaphyllos*. †Chevêche *Strix passerina*, grande chevêche, *Strix ulula*.

I am the first mortal who ever penetrated this recess. I began to regard myself as another Columbus. But while I was exulting in this idea, I heard a clicking noise, which I thought I recognised ; I listened ; the sound was repeated and multiplied ; surprised, and curious to know what it was, I rose, and penetrating a close thicket of furze, in the direction of the noise, I found in a clump of bushes, twenty paces from the spot, which I imagined I had been the first to explore, a manufactory of stockings.

I cannot express the conflicting feelings which struggled in my heart on this discovery. My first emotion was a sentiment of joy, on finding myself restored to my species, in a spot where I had imagined myself entirely alone. This sentiment, however, more rapid than lightning, soon yielded to that of regret, at being unable to escape even in the declivities of the Alps, from the hands of my fellow creatures, bent on tormenting me. For, I was convinced, there were not two men in this establishment, who were not in the plot, of which Montmollin was the head, and who drew his abettors from a greater distance. I hastened to repress this unpleasant thought ; and concluded by laughing at my puerile vanity, and the comick manner in which it was punished.

Who would have dreamed of finding a manufactory on the brow of a precipice ? No country but Switzerland presents this strange union of savage nature and of human industry. It is all a vast city, whose streets much wider and longer than that of St. Antoine, are set with forests, crowned with mountains, whose houses, scattered and lonely, are separated by

English gardens. This recalls to my memory another herborization, which Du Peyrou, Descherny, Colonel Pury, Justice Clerc and myself, once made on the Chasseron* mountain, from the summit of which we saw seven lakes. We were informed that there was but one house on the mountain, and we surely should never have divined the profession of its inhabitant, had we not been told, he was a bookseller, and succeeded well in his trade. It appears to me, that a single fact of this kind, conveys a better idea of Switzerland, than all the descriptions of travellers.

Listen to a story of the same nature, which is equally descriptive of the character of another people. During my residence at Grenoble, I made frequent herborizations around the city with the *Sieur Bovier*, an advocate of that country; he accompanied me, not because he understood or had any taste for botany, but because having taken me entirely under his care, he never, when he could avoid it, left me. We walked once along the banks of the *Isere*, which were covered with prickly willow.† I found ripe berries on the tree, and had the curiosity to taste them; they had an acid taste not unpleasant; and I ate of them to refresh myself. *Sieur Bovier* continued by me without following my example, but said nothing. One of his friends behind us, observing that I plucked the fruit, cried out "Heh! Sir, what are you doing; do you not know that fruit is poisonous?" "Poisonous!" exclaimed I with surprise. "Undoubtedly," he replied "every body here knows that so well, that we

* The *Chasseral*, the frontiers of *Neufchatel*, not *Chasseron*.

† *Hippophae Rhamnoides*.

never touch them." I looked at *Sieur Bovier*, and asked him, why he did not tell me this. "Ah, Sir," said he, "I dare not take the liberty." I smiled at his humility, discontinuing, however, my collation. I was persuaded, and continue to be of opinion, that no natural production, agreeable to the palate, is hurtful, except in excess. I admit that I felt some uneasiness during the rest of our walk; but I suffered no other injury than a little anxiety. I supped heartily, slept well, and rose in the morning in good health; after having swallowing fifteen or twenty berries of this terrible *Hippophae*, which every body at *Grenoble* told me the next day, poisoned in small quantities. This was so pleasant an adventure, that I never remember it without smiling at the singular discretion of *Mr. Bovier* the advocate.

All my botanical excursions, the different associations of the place where the objects struck my attention, the ideas to which they gave birth, the incidents with which they are connected, have each left impressions, which are renewed by the sights of the plants collected at those several spots. I shall see no more those beautiful landscapes, those forests, lakes, thickets, rocks, and mountains, whose scenery has always touched my heart; but now that I can no longer traverse that happy country, I have only to open my herbarium, and I am transported to its bosom. The fragments of plants which I there plucked, revive in my memory all the magnificent spectacle. This herbarium is to me a journal of herborizations, which incites me to recommence them with new delight, and produces the effect of an optick, which will in days to come, bring them back to my sight.

A chain of necessary ideas attached me to botany. It groups and recalls to my imagination, all the associations which soothe it—meadows, streams, woods, solitude, and above all, the repose which we find in them, it perpetually presents to my memory. It makes me forget the persecutions of men, their hatred, their scorn, their outrages, and all the injuries with which they have repaid my tender attachment to them. It transports me to the most peaceful habitations of man; to the bosom of a people, peaceful and amiable; to those with whom I once lived. It recalls the years of my youth, and of my innocent pleasures; it makes me enjoy them anew; and, often renders me happy—even now, in the saddest condition that ever overwhelmed a mortal.

A
TREATISE
ON
NATURAL RIGHT:

TRANSLATED FROM THE FRENCH

OF

MR. QUESNAY,

IN 1816.

Positive law ought to be conformable to the law of nature.

MONTESQUIEU.

Vertical line of text on the left side of the page, possibly a page number or header.

Small mark or character at the top left.

Main body of text, appearing as a very faint and illegible scan of a document.

Small mark or character at the bottom left.

PART OF THE "PRELIMINARY DISCOURSE OF THE
EDITOR RELATIVE TO THE TREATISE ON NATU-
RAL RIGHT, FROM THE COLLECTION ENTITLED.

"PHYSIOCRACY."

THE natural right of man in its primitive and most comprehensive sense is, the right which man has to whatever is advantageous to him ; or, as the author, some of whose works I now publish, says, "the right which man has to whatever is necessary to his enjoyment."

This right is subject, even by nature, to relations which vary its use so much, that we are obliged to define it in a very general manner, so as to embrace all the different states in which man can exist.

But, in whatever circumstances we may suppose ourselves, whether we live in solitude, or in regular society, our right to what is necessary to our enjoyment, is founded on an imperious condition, by which we are impelled to preserve ourselves, under the penalty of suffering, and even of death. The last degree of punishment decreed by this sovereign law, is paramount to every other interest, and to every positive law.

The exercise of the right of doing whatever is advantageous to us, necessarily supposes the knowledge of what is advantageous to us. It is of the essence of this right, to be enlightened by reflection, by judgment, by physical and moral arithmetick, and by a calculation of our true interest. Without which, instead of employing our faculties in doing what would be advantageous, we should often employ them in doing what would be injurious. In that case, it could not be said, that we had exercised our natural right; and there would exist between the principles of our conduct, and most of its effects, a gross and fatal contradiction. It is then clear, that the exercise of our natural right, is evidently and necessarily determined by absolute causes, which we should study and understand distinctly: to which the mind is obliged rigidly to submit itself, and without conformity to which, we could do no action, either lawful or reasonable.

The right to things, necessary to our enjoyment, existed for the first man. It exists for a single isolated individual. Considered rigidly and abstractedly, in this elementary point of view, it precedes the social order, as well as the relations of justice and injustice. But, in this case, as in every other, it is not less subject in its essence, to the physical laws of the natural and general order of the universe. In this case, as in every other, it cannot be exercised with certainty, without the direction of an enlightened reason. In this case, as in every other, it is confined within different limits from those of the physical power of the individual, and to evident sovereign rules, from

which the individual cannot deviate in any manner, but to his own prejudice.

A man entirely alone on a distant island, appears to have a choice of acting, or of being idle. But, as we have before remarked, he is constrained by nature to preserve himself, under the penalty of sufferance, and even of death. He will then, if he be not mad, by no means remain entirely idle. He will labour to procure food, and to preserve himself against the attacks of other animals. He will learn, also, that it is not sufficient to satisfy by the labour of the moment his present wants; he will endeavour to accumulate and preserve provisions against future contingencies, to afford him sustenance in those seasons when the earth yields none. Otherwise he would not exercise his right of doing what is advantageous to him: he would not fulfil the duty, imperiously dictated to him by nature: and he would be promptly and severely punished for his negligence, by the inevitable effect of a natural law.

If, instead of a single individual, many men had met in an unsettled country, it is certain that the strong would sometimes have the physical power to take away the provisions of the weak; that two weak persons united together—nay, that by stratagem and address, even the most feeble person, might have the physical power to overcome the strongest, and take from him his prey, and even his life. - But it is equally certain, that they would abstain from conduct so dangerous, so disorderly, so fruitless of good, so calculated mutually to disturb the labour necessary to their subsistence, and the palpable danger of which, would be so certain-

ly reciprocal. They would immediately perceive, that such a state of war, could only terminate in the ruin of all—and that in the mean time, they would all be constrained to lead a most miserable life, in which no one could enjoy, or even hope to enjoy, this right of doing what would be advantageous to him.

But men are interested in nothing more than in securing the enjoyment of this fundamental right. Each individual is admonished by the pressing wants of necessity, to employ his physical power for his preservation, instead of using it to hurt and destroy others. Natural wants, fear, interest, and finally reason, would induce them to unite their efforts for the good of all—to submit to the rules of natural justice, and of reciprocal kindness—and would establish among them, social conventions, tacit or express, to secure to each the lawful use of his natural right to things necessary to his enjoyment—or, in other words, the liberty of profiting from the benefit he may derive from the natural order of things.

NATURAL RIGHT,

BY

MR. QUESNAY.

CHAPTER I.

WHAT is the Natural Right of Man ?

The natural right of man may vaguely be defined to be, the right which man has to whatever is proper for his enjoyment.

Before we consider the natural rights of man, we must consider man himself in his different states of bodily and intellectual capacity, and in his different relations to other men. If we do not enter into this examination before we undertake to develop the natural right of each individual, it will be impossible to perceive even what that right is.*

It is from not having ascended to these previous observations, that philosophers have formed such different and even contradictory ideas of the right of man.

* There have been many discussions on natural right, as philosophers have disputed about liberty, justice, and injustice. They have wished to consider as absolute essences, those relative attributes, of which we can have no adequate and just idea, but by uniting them to the correlatives on which they depend, without which, they would be but ideal and empty abstractions.

Some with a semblance of reason have refused to admit it; others with more reason have admitted it—and there is truth on both sides.—But one truth excludes another in the same object, when its state is changed, as one form is the privation of another form in the same body.

He who says that the natural right of man is of no force, says true.*

He who says that the natural right of man is what nature teaches all animals, says true.†

He who says that the natural right of man is the right which his strength and his intelligence secure to him, says true.‡

He who says that the natural right of man is limited to the particular interest of each individual, says true.§

He who says that natural right is a general and sovereign law which regulates the rights of all men, says true.||

He who says that the natural right of man is the unlimited right of all to all, says true.¶

* See for example the end of this chapter.

† This is the definition of Justinian—it, like the others, has its aspects in which it is true.

‡ See for example page 187, and the note on page 199.

§ See for example the note on page 186.

| See pages 193 and 194. With a little more extent this proposition will agree with ours.

¶ This is the system of the sophist Crasimachus in Plato—renewed by Hobbes—and, since Hobbes, by the author of a book entitled “Principles of Natural and Political Right.” See it stated and refuted on pages 183, 184, and 185.

He who says that the natural right of man is a right limited by a convention, either express or implied, says true.*

He who says that the natural right supposes neither justice nor injustice, says true.†

He who says that natural right is a just, decisive and fundamental right, says true.‡

But none of them say true relative to all cases.

Thus philosophers have stopt with a parallogism, or incomplete argument, in their researches on this important question, which is the natural principle of all the duties of man regulated by reason.

An infant without strength or reason, has an incontestable natural right to subsistence, founded on the duty which nature dictates to the father and mother. This right is so much the better secured, because the duty of the father and mother is accompanied by a natural impulse, which acts more powerfully on parents, than the idea of the natural order which establishes the duty. Nevertheless, we cannot forget that this duty, pointed out and secured by feeling, is in the order of justice—for parents can but render to infants, those duties which they have received from their pa-

* See pages 193, 194, and 195.

† This is the case of a single individual on a desert island, in which the natural right to the provisions of the island, admit neither justice nor injustice, because, justice and injustice are relative attributes which cannot exist apart from persons, towards whom they may be exercised. See the commencement of chap. iv.

‡ See in contradiction page 181.

rents—but a precept which refers itself to a just right, binds every reasonable creature.

If I be asked, what is justice? I reply, it is a natural and sovereign rule, discovered by reason, which determines what belongs to one's self, and what to another.

If the father and mother of the infant die, and he find himself without any other resource,* inevitably abandoned to his own helplessness, he is deprived of the exercise of his natural right, and this becomes void. For a relative attribute is void, when the correlative is wanting. The use of eyes is lost in a place totally without light.

* Mark the expression "without any other resource," for if there be human beings within his reach, he has a right to their assistance, because he suffers what they have suffered—and they could not have lived had they not been assisted in their infancy.

CHAPTER II.

THE extent of the Natural Right of Man ?

The natural right of man differs from his conventional right, or his right dependent on human laws in this; that it is apparent to the light of reason from its internal evidence—and by this evidence alone, it is obligatory, independently of all other constraint: while conventional right, limited by a positive law, is obligatory by reason of the penalty attached to its transgression, by the sanction of this law, and can be known only by its being announced in the law itself.

From these different conditions, one sees the whole extent of natural right, and what distinguishes it from conventional.

Very often conventional right restrains the natural, because human laws are not so perfect as those of the author of nature, and because human laws are sometimes obtained by surprise, from motives, of which enlightened reason cannot always recognise the justice, which is the cause why legislatures often wisely abrogate laws which they themselves have made. The multitude of absurd and contradictory laws successively established among nations, proves manifestly that positive laws often deviate from the immutable rules of justice, and the natural order most beneficial to the society.

Some philosophers, absorbed in the abstract idea of the natural right of man, which gives to each a right to every thing, have limited this natural right to a state of pure independence of men upon one another, and to a state of war among them, each struggling to obtain his unlimited right. Thus, these philosophers pretend, that when a man is deprived by convention, or legitimate authority, of any portion of the natural right which he has to whatever is proper for his enjoyment, his general right is destroyed, and the individual becomes dependent on another by his contract, or by a coercive authority. He is no longer in a state of simple nature ; or of entire independence ; he is no longer the sole judge of his right ; he is subject to the judgment of another ; he is, therefore, say they, no longer in a state of pure nature, nor consequently in the sphere of natural right.

But if we attend to the futility of this abstract position, the natural right of all to all, we must, in conformity to the natural order itself, reduce this natural right of man to things of which he can obtain the enjoyment—and this pretended general right will in fact be very limited.

In this point of view it will be perceived, that the reasoning which I am exposing, is but a frivolous sophism, or trifling of the mind, very much out of place in discussing so important a question—and we shall be well convinced, that the natural right of every man, reduces itself in reality, to that portion which he can obtain by his labour—for his right to all, is like that of a swallow to all the gnats which float in the atmosphere,

which in truth is limited to those only, which it can catch by its labour prompted by hunger.

In a state of pure nature, things proper for the enjoyment of man, are reduced to what nature spontaneously produces, and over which each man can exercise his natural, indeterminate right, in procuring a certain portion by his labour—that is by his exertions. Whence it follows : 1. That his right to all, is but ideal. 2. That the portion which he enjoys in a state of pure nature, is, what he obtains by his labour. 3. That his right to things proper for his enjoyment, must be considered in the order of nature, and in the order of justice ; for in the order of nature it is undetermined, as long as it is not secured by actual possession ; and in the order of justice, it is determined by an effective possession, acquired by labour, without usurpation on the right of possession of another. 4. That in a state of pure nature, men, compelled to satisfy their wants by their own exertions, will not lose their time in mutual contentions and battles, which would only oppose* obstacles to their occupations, necessary for providing means of subsistence. 5. That a natural right, consisting in the order of nature, and of justice, extends to all states in which men exist, in whatever relation to one another.

* This is the case in the proverb which addresses itself to all in a state of nature, “ If you want. go and seek, no one hinders you.” This rule extends to beasts ; those of the same kind which are in the same situation, do not contend with one another reciprocally to prevent their obtaining nourishment by their exertions.

CHAPTER III.

Of the inequality of the Natural Rights of Men.

We have seen, that even in a state of pure nature, or of entire independence, men only enjoy their natural right to things of which they have need, by labour; that is, by the exertion necessary to obtain them—thus, the right of all to all, reduces itself to that portion which each can procure, whether they live by the chase, or by fishing, or on the vegetables which nature spontaneously produces. But to make these exertions with success, they must have faculties of body and mind, and means, or proper instruments to act, and to obtain what is necessary to gratify their wants. The enjoyment of this their natural right must be very limited in that state of pure nature and independence, where we do not suppose among them, as yet, any combination to aid one another, and where the strong can use unjust violence toward the weak. So soon as they shall enter into societies, and form conventions with one another for their reciprocal advantage, they will increase the enjoyment of their natural right, and secure it even to its full extent, if the constitution of the society be conformable to the order evidently most advantageous to man, relative to the fundamental laws of their natural right.

But in considering the bodily and intellectual faculties, and the other means of each particular individual,

we will still find a great inequality relative to the enjoyment of the natural rights of men. This inequality does not admit the relations of just and unjust in its principles. It results from the combination of the laws of nature, and men cannot penetrate the designs of the Supreme Being in the construction of the universe ; they cannot exalt their minds to comprehend the end of the immutable laws which he has instituted for the formation and preservation of his works. But if one will examine these rules with attention, he will find that the physical causes of physical evil, are, themselves, causes of physical good : that the rain which incommodes the traveller, fertilizes the earth : and if one calculate without prejudice, he will perceive that these causes produce infinitely more good than evil, and that they were instituted for good purposes only. That the incidental evil which they produce, necessarily results from the essence of those very properties by which they produce good. It is for this reason, that in the natural order relative to men, there are no laws obligatory but for our good—they impose upon us the duty of avoiding as far as we have the power, the evils which our prudence can foresee.

We must then by no means attribute to physical laws, the evils which are a just and inevitable punishment of the violation of the order of physical laws instituted to produce good. If a government violate the natural laws which ensure success to agriculture, would any one dare to arraign agriculture itself, because there was a want of bread, and, because at the same time the number of men was seen to diminish, and that of the miserable to increase ?

Transgressions of the natural laws are the most frequent, and most extensive causes of the physical evils which afflict mankind. Even the rich who have more means of avoiding them, draw on themselves by their ambition, their passions, and even their pleasures, many evils, for which they have no excuse but their own irregularities. This would lead insensibly to another cause of physical and moral evil, very different from physical laws, which is the abuse of human liberty. Liberty, that essential attribute of man, which he would extend beyond its limits, never appears to him the cause of evil. If he injure himself, if he destroy his health, dissipate his fortune, and ruin his family by the abuse of his liberty, he complains of the author of liberty, because he would be more free.*

* What do the words "*more free*" mean? Do they signify more arbitrary, that is, more independent of the motives which act on the will? No. For if this independence were entire, it would reduce the will to a state of indifference; and in that state liberty would be nothing: it is not in this sense, then, that we say "*more free*." These words can still less relate to a state of the will controlled by irresistible motives. These two extremes limit the extent of the natural use of liberty.

Liberty, is a faculty relative to exciting but controllable motives, which counterbalance and weaken one another, which present opposite interests and attractions; which reason, more or less enlightened, and more or less prejudiced, examines and appreciates. This state of deliberation consists in many acts of the exercise of liberty, more or less sustained by the attention of the mind. But to have a still more precise idea of liberty, we must not confound its state of deliberation, with the decisive act of the will, which is a

He does not perceive that it is himself in contradiction with himself. Let him then acknowledge his own extravagancies. Let him learn, then, how to employ this liberty, so dear to him, rightfully. Let him ban-

simple, definite act, more or less precipitate, which determines the exercise of liberty, which is not an act of liberty, but simply an absolute determination of the will, more or less prepared for the choice by the exercise of liberty.

After these observations, familiar to every one the least attentive to the exercise of his mind, we may ask those who deny the existence of liberty, if they are well assured of having never deliberated? If they acknowledge they have deliberated, let us ask them why they have done so? and if they admit it was to choose, they will be conscious of the exercise of an intellectual faculty between motive and decision. Then we agree to the reality of this faculty; and it will be idle to dispute as to its name.

But under this name let us not unite contradictory conditions; such as the condition of being able equally to acquiesce in none; conditions which exclude every reason of preference, choice, or decision. For then, every exercise, every use, in a word, every essential property of liberty would cease to exist, and the word would signify only an inconceivable abstraction, like that of a stick without two ends. To deprive the will of man of all power of determination to render it free, is to destroy the will itself, for every act of the will is to wish a particular thing, which thing determines the will to a preference. To destroy the motive is to destroy the liberty itself, or the intellectual faculty which examines and appreciates objects relative to the affections of the will.

Let us not stop longer on this absurdity, but conclude, that he only is wise, who employs himself in perfecting his liberty. Others always think themselves sufficiently free,

ish ignorance and irregularity, those sources of the evils he brings on himself by the abuse of his freedom. He is by nature a free and an intelligent being, although he is often neither one nor the other. By the blind and imprudent use he makes of his liberty, he often makes bad choices; by his intelligence he can make better, and* conduct himself with prudence as far as the order of the physical laws which constitute the universe will permit.

when they can satisfy their desires; therefore they are only desirous of procuring the means of multiplying the choices which may extend, not their liberty, but the imprudent use of it. He who has only one dish for his repast, has only the choice to eat or leave it, and to eat more or less of it; but he who has twenty dishes, may extend the exercise of his liberty over all the dishes, may choose what he finds best, and eat more or less of what he shall have chosen. It is in this sense, that unenlightened man is ever busy to extend the enjoyment of his liberty, and to satisfy his passions with as little discernment as moderation, which has obliged men who live in society to establish among them penal laws to repress the abuse of liberty. Then they extend their liberty from motives of interest which counterbalance one another, and excite the attention, which is, so to speak, "the active organ of liberty or of deliberation." Thus liberty or deliberation may be extended by the very motives which restrain the rash and imprudent use of liberty.

* There are many kinds and degrees of folly, but every one who is a fool from the effect of a badly organised brain, is hurried away by a physical law which does not permit him to make the best choice, or to conduct himself with wisdom. To be a fool is not to be free. Liberty presupposes examination and reason.

Physical good and physical evil, moral good and moral evil, have evidently, then, their origin in natural laws. Every thing has its immutable essence and its properties inseparable from its essence. Other laws may have other essential properties, probably less conformable to the perfection which the author of nature has given his works: those which he has instituted are just and perfect in the general plan, since they are conformed to the order and the ends which he has proposed to himself. For he is the author both of the laws and the rules, and consequently superiour to both. But their end is to produce good, and every thing is subject to those which he has instituted. Man, gifted with intelligence, has the prerogative of being able to contemplate and understand them, to draw from them the greatest possible advantage without being rebellious against them.

From whence it follows, that every one has a natural right to use with gratitude, all the faculties with which he has been endowed by nature, in whatever circumstances he be placed—under the condition of neither injuring himself nor another—without which condition, no one would be assured of preserving the use of his faculties, or the enjoyment of his natural right—which conducts us to the following chapter.

CHAPTER IV.

Of the Natural Right of Men considered relatively to one another.

Men may be considered either in a state of solitude, or as congregated into societies.

If one view men as dispersed in such a manner as that they can have no communication with one another, he perceives that they are completely in a state of pure nature, and of entire independence, without any relation either of justice or injustice as respects one another. But this state could subsist only during the life of each individual, unless we suppose, that these men live at least each with a wife in his seclusion, which would entirely change the hypothesis of their state of solitude; for this association of a wife, and of children who would follow, would admit of an order of dependence, of justice, of duty, of safety, and of reciprocal assistance.

Every man is impelled to preserve himself under the penalty of suffering, and he alone suffers, who is wanting in that duty to himself, which obliges him to provide for himself before all others. But all those with whom he is associated, are charged with the same duty under the same penalty. It is in the natural order, that the strongest should be the chief of the family; but it is not in the order of justice, that he should usurp the natural rights of those who live in a community of interests with him. There is, then,

a compensation in the enjoyment of the natural right of each, which must be advantageous to every individual of the family, and which ought to be regulated by the chief, according to the order of distributive justice, conformably to the duties prescribed by nature, and to the co-operation by which each contributes to the advantage of society according to his capacity. Different individuals contribute differently, but the employment of one is a discharge of so much labour to another, and by this distribution of occupations, every one can perform his own work more completely: by this reciprocal assistance, every one contributes to the advantage of society nearly equally. Therefore, every one ought to enjoy the full extent of his natural right, conformably to the advantages which result from the concurrence of the labour of the whole society: and those who are not in a state to contribute any thing, ought to be allowed to participate, by reason of the facility which the particular society has to provide for them. These rules, which are obvious, direct the chief of the family to unite in the society the natural order, and the order founded in justice. He is still more induced to this, by sentiments of pleasure, of tenderness, of pity, &c. which are so many indications of the intention of the author of nature to secure the observance of rules, which he prescribes to men, to bind them by the obligations of duty mutually to assist one another. If we consider men as congregated into multitudes, where mutual communication is unavoidable, and where, as yet, there should be no positive laws, which had united them into society under the authority of a sovereign.

power, and which had subjected them to a form of government,—we must look upon them as hordes of barbarians, who would subsist on the natural productions of the soil ; or would expose themselves from necessity to the dangers of a predatory life, if there were nations possessing wealth on which they could make incursions : for in this state, they could not procure wealth for themselves either by agriculture, or by pasturing flocks : because there would be no tutelary power to guard the security of property. But at least, there would be established among them, of necessity, conventions tacit or express for their personal safety : for men have, in this state of independence, a fear of each other, which mutually disquiets them : from which they may easily relieve themselves, since nothing can be of more importance to each, than to be reciprocally delivered from this fear. Those of the same canton see each other more frequently—they become accustomed to the sight of each other—confidence is established between them—they aid one another—they become allied by marriages, and form, in a manner, particular nations, where all are leagued together for the common defence, and where, moreover, each remains in a state of entire liberty or independence toward the other, with the condition of personal safety, and the exclusive property in the habitation, and in the little utensils which each has, for his particular convenience, established among them. If their riches in property be more considerable, and more dispersed, or more exposed to plunder, the constitution of such nations would not be sufficient to secure their property. They must then have positive written laws,

or, a convention and a sovereign authority to enforce them—for their riches, easily taken from them when abandoned to the fidelity of the publick, would excite among their less virtuous countrymen desires, which would induce them to violate the property of others. Thus the formation of societies depends on the larger or smaller portion of wealth which each possesses or may possess, and of which he wishes to secure to himself the preservation and the property. And thus, men who place themselves under the protection of positive laws, and of a tutelary authority, extend very much their power of becoming proprietors, and by consequence, extend very much the use of their natural right, instead of restraining it.

CHAPTER V.

Of the Natural Right of Men united in Society under a Sovereign Authority.

Societies are governed by an authority, in its form either monarchical, aristocratical, or democratical, &c. But it is not the different forms of authority which determine the essence of the natural rights of men united in society, for the laws vary a good deal in each of these forms. The laws of government which decide the rights of subjects, reduce themselves, almost always, to positive laws, or laws of human institution : but these laws are not the essential and immutable foundation of natural right—and they vary so much that it would be impossible to examine the state of the natural rights of men under them : it is even useless to enter on this examination : for where the laws and tutelary power do not secure liberty and property, neither the government nor society can be of any advantage : there is only domination and anarchy under the appearance of government : positive laws and this domination but protect and secure the usurpation of the strong, and destroy the liberty and property of the weak. A state of pure nature is then more advantageous than this violent state of society, which passes through every vicissitude of disorder, of form, of authority, and of sovereigns. This appears so inevitable, that men who abandon themselves to the contemplation of all these changes, persuade them-

selves that it is in the irreversible order of destiny, that governments should have their commencements, their progress, their highest elevation of power, their decline, and their extinction. But they are constrained at the same time to admit, that this order is very irregular, that the passages through it are more or less rapid, more or less uniform, more or less unequal, more or less complicated by unforeseen events, favourable or disastrous, more or less directed or fortuitous, more or less attributable to prudence or folly, to knowledge or ignorance, to wisdom or to the licentious passions of those who govern: they must likewise conclude, at least, that the fatality of bad governments is not inherent in the natural and immutable order, the archetype of all governments.

To understand the order of seasons, and of places, to regulate navigation, and secure commerce, it has been found necessary to observe and calculate with precision the laws of motion of the heavenly bodies: we must also, to know the extent of the natural rights of men united in society, ascertain the natural laws constitutive of the best possible government. That government to which men ought to be subjected consists in a natural and a positive order, the most advantageous to men united in society.

Men united in society, then, ought to be subject to natural and to positive laws.

Natural laws are either physical or moral. By physical law, we here mean, the regular course of every physical event of the natural order evidently most advantageous to mankind.

By moral law we mean, the rule of every human action of the moral order conformable to the physical order, evidently most advantageous to mankind.

These laws form together what we call natural law : all men and all human powers ought to be controlled by these sovereign rules, instituted by the supreme being. They are immutable, irrefragable, and the best laws possible.* Of consequence they are the foundation of the most perfect government, and the fundamental rule of every positive law ; for positive laws are but laws of preservation relative to the natural order evidently most advantageous to mankind.

Positive laws are authentick rules established by a sovereign authority to determine the order of administering the government, to secure the defence of society, to enforce the regular observance of natural laws, to reform or maintain customs and usages introduced into the nation, to regulate the particular rights of subjects relative to their different states, to determine the positive order in doubtful cases reduced to probability of opinion or convenience, to settle the decisions of distributive justice. But the first positive law, the fundamental law of all the other positive ones, is, the institution of publick and private instruction in the laws of the natural order, which is

* The natural order the most advantageous to man, is not perhaps most advantageous to other animals. But man has an unlimited right to make his part the best possible. The superiority he has belongs to his intelligence ; it is a natural right, since he holds it from the author of nature, who has decreed it so by the laws which he has ordained in the formation of the universe.

the sovereign rule of all human legislation, and of all civil, political, economical and social conduct. Without this fundamental institution, government and the conduct of men can be nothing else than darkness, error, confusion, and disorder ; for without the knowledge of natural laws, which ought to serve as the basis of human legislation, and as sovereign rules for the conduct of men, we could have no evidence of justice or injustice, of natural right, of physical and moral order : no evidence of the essential distinction between general and particular interests, of the real causes of the prosperity and of the decline of nations ; no evidence of the essence of moral good and evil, of the sacred rights of those who govern, or of the duty of those to whom the social order prescribes obedience.

Positive legislation, then, consists in the declaration of natural laws, constitutive of the order evidently the most advantageous possible to men united in society. We might say more simply, the most advantageous possible to the sovereign, for what is really most advantageous to the sovereign is most advantageous also to the subject. Nothing but the knowledge of these laws can constantly secure the tranquillity and the prosperity of an empire : and the more a nation shall apply itself to this science, the more will the natural order predominate in it, and the more regular will the positive order be : no one in such a nation would propose any unreasonable law, for both the government and its citizens would perceive its absurdity.

The foundation of society is the subsistence of men, and the funds necessary to the support of the power



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100



SEP 2 1958





SEP 2 1958



